

No. 13010

United States
Court of Appeals
for the Ninth Circuit.

POTLATCH OIL & REFINING COMPANY, a
Corporation, and JEAN P. GERLOUGH,
STANLEY H. HODGMAN and ROY E.
LARSON, as Trustees of That Certain Trust
Known as Inland Empire Oil and Gas Syndi-
cate, a Common Law Trust,

Appellants,

vs.

THE OHIO OIL COMPANY, a Corporation,
Appellee.

Transcript of Record
In Two Volumes

Volume II
Pages 369 to 635)

Appeal from the United States District Court,
for the District of Montana.

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JEAN P. GERLOUGH

Redirect Examination

(Continued)

By Mr. McCabe:

Q. Mr. Gerlough, in the year of 1945 did the Potlatch Oil and Refining Company and Inland Empire Oil and Gas Company employ an attorney to represent them? A. Yes, they did.

Q. Who did they employ?

A. Mr. E. J. McCabe of Great Falls.

Q. And who represented the companies in informing Mr. McCabe he was attorney for these two companies? A. I did.

Mr. Everett: I think that is wholly irrelevant and immaterial. You filed the pleadings, didn't you, in the action? We have no objection.

Q. After I was employed did I direct your attention to certain letters and communications between myself as attorney for the two companies you mentioned and The Ohio Oil Company?

A. Yes, you did.

Mr. Everett: I would like to ask first what is the purpose of this testimony.

Mr. McCabe: The purpose of the testimony is to show in the course of this correspondence as attorney for the company express demand was made for an accounting being made upon the company and that no accounting was made. [380]

Mr. Everett: I didn't think any part of accounting was to be tried or any issue with respect to it this morning.

(Testimony of Jean P. Gerlough.)

Mr. McCabe: That is correct. However, your Honor, we have alleged in the complaint a demand for accounting was made and no accounting was in fact made pursuant to that demand.

The Court: When was it; 23 years after?

Mr. McCabe: What is that?

The Court: Twenty-three years after the contract was entered into.

Mr. McCabe: Oh, yes, in 1945 and 1946, and 1946 is the year that I made the demand as attorney for the plaintiffs.

Mr. Everett: I don't see the relevancy of it. I can state for the record if that is sufficient for Mr. McCabe, that he came down to Casper, Wyoming, on July 27, 1946, or shortly thereafter, at which time Mr. Healy and I met with him, and he said, we have a claim, and we said, well, if you have one, what is your contention? He told us his contention and we said, if that is correct, then we think you better go to court with it because we just cannot agree with it. If that constitutes a demand, if that is sufficient, as far as I say, I will say it was a demand, Mr. McCabe. I don't see any use in cluttering up the records. Here is what Mr. McCabe is leading up to, this bunch of papers. [381]

Mr. McCabe: You said you would stipulate as to certain phases. Will you stipulate that these letters that I refer to I wrote you demanding that The Ohio Oil Company render an account and containing such reference to the fact that objections had been made to the account by the Potlatch Oil

(Testimony of Jean P. Gerlough.)

and Refining Company and the Inland Empire Oil and Gas Syndicate?

Mr. Everett: Yes, that is actually what happened and further than that I will ask you to add to the stipulation for the record there is one other thing which we told you at that time and informed you at that time that, our construction of the contract and we were just clearly at odds and you better go to court with it.

Mr. McCabe: You recall at that time you said if these errors were in fact that The Ohio Oil Company would not make objections on the grounds of laches and limitations of actions in the presence of Mr. Healy. There was a question whether or not these charges were correct and proper but that is the statement you made at that time.

Mr. Everett: Well, I have a memorandum that I made at that time of our conference, and I will state that as my understanding, and if that isn't sufficient to cover the matter, we will see if the court wants to let you go ahead. I think it is wholly incompetent, irrelevant and immaterial to any issue in the trial. [382]

The Court: I don't know that it does any more than shows you went down there and had a talk with the officers and attorney for the company and made a demand on them for settlement and they declined and said you better sue. Now, what further is necessary in connection with it?

Mr. Everett: That is a satisfactory statement of the situation.

Mr. McCabe: That is satisfactory to me, your Honor. There is no use cluttering it up with what he said and what I said. Did you make that statement?

Mr. Everett: You said what the court said was satisfactory with you and that is satisfactory with me.

Mr. McCabe: All right.

The Court: Now take up the next matter.

Mr. McCabe: Mr. Everett, is there any question that Mr. H. H. Healy was Division Manager of The Ohio Oil Company during the year 1945, and years 1946, up to the present time?

Mr. Everett: Yes, sir, as Division Manager, and formerly Division Attorney and has been employed by the Company as Division Attorney and as Division Manager; in the first capacity until I became associated in the Company in 1941 as its Division Attorney, at which time Mr. Healy was Division Manager and has continued to act as such and in that capacity has since. [383]

Mr. McCabe: That is sufficient. That is all.

Mr. McCabe: The next witness is a very short witness. Mr. L. J. Yealy.

L. J. YEALY

was called as a witness, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. McCabe:

Q. Mr. Yealy, it has been stipulated——

The Court: What is the witness' name?

(Testimony of L. J. Yealy.)

A. L. J. Yealy.

Q. You were employed, were you, by The Ohio Oil Company at various times? A. Yes, sir.

Q. And during the years of 1923 on were you employed by that company? A. Yes, sir.

Q. And what years were you so employed, between what years?

A. By The Ohio Oil Company?

Q. Yes. A. Between 1893 and 1938.

Q. How long were you District Superintendent for The Ohio Oil Company?

A. I can't answer that exactly.

Q. Just approximately.

Mr. Everett: Tell him what years you mean, 23 years [384] or more or something like that.

Q. What is that? A. 23 or 24 years.

Q. During the years 1923 to—from 1923 on did you hold that position with The Ohio Oil Company?

A. Until 1938, yes.

Q. Now, during those years was there any other resident agent or representative of The Ohio Oil Company residing in Toole County, Montana?

A. Not ahead of me.

Q. Ahead of you? A. Above me.

Q. Above? A. Yes, sir.

Mr. McCabe: That is all.

Cross-Examination

By Mr. Everett:

Q. Mr. Yealy, when did you first go to the Kevin Sunburst Field in Toole County, Montana? When did you first go to Shelby?

(Testimony of L. J. Yealy.)

A. From Wyoming I went to Shelby in 1922, September 2nd.

Q. September 2, 1922? A. Yes.

Q. And you were in charge of the field operations? A. Yes, sir. [385]

Q. And in charge of the local office?

A. Yes, sir.

Q. Was any part of the accounting with reference to those operations done in that office?

A. The accounting was done in the head offices at Findlay, and then Findlay and Casper.

Q. Did you know Mr. T. P. Jones?

A. I did.

Q. Do you know Mr. Jean Gerlough?

A. I do.

Q. During the time that you were up there did either of those gentlemen make any complaint to you——

Mr. McCabe: To which we object on the ground it is improper cross-examination. The witness solely testified to his connection with the company. Now, that is properly a part of the case in chief.

The Court: I think I should sustain the objection.

Mr. Everett: Well, we will call you later. Unless you want to while the witness is on the stand let me present him as my witness on direct examination.

The Court: If that is all you are going to call the witness for, that one point.

(Testimony of L. J. Yealy.)

Mr. McCabe: I rest anyway, if counsel is through his cross-examination, we rest our case.

The Court: You rest now?

Mr. McCabe: Yes, your Honor, plaintiff [386] rests.

Mr. Everett: We will call Mr. Yealy as our first witness.

The Court: For the defense.

Mr. Everett: May it be considered that the questions we have already asked him on cross-examination shall be considered as part of the direct examination?

The Court: It may be.

Direct Examination

By Mr. Everett:

Q. Mr. Yealy, during the time that you were in Shelby at any time during the time the Troy Sweet Grass Oil Syndicate had an interest in the Baker and in the I. Sindon leases, did they ever object to any charges made in connection with the operations on those leases?

Mr. McCabe: To which we object on the grounds it calls for a conclusion of the witness and that the witness be confined to state what was said by them in any conversations or communications and what he said in return.

The Court: I will let him testify as to whether they made any complaints about the contract about the execution——

Mr. McCabe: About the charges.

(Testimony of L. J. Yealy.)

Mr. Everett: About the charges under the [387] contract.

Mr. McCabe: That is all.

The Court: Then I will permit him to answer.

Q. (By Mr. Everett): The Troy Sweet Grass?

A. Answer the question?

Q. Yes.

A. There was no direct charges as I can remember with the exception on Mr. Gerlough's part. Mr. Gerlough used to come to our office quite often and complain and ask about some of the charges that was made; some of the questions I could answer and some I couldn't. The ones I couldn't answer I left him to take up with our head offices either in Findlay or Casper. If I got any letters as to this thing, those were referred to our legal departments in Findlay or Casper and they I supposed answered his questions or the letters.

Q. Well, did Mr. T. P. Jones ever make any objections to any charges that were made; did he ever make any objections to you about any charges that were made?

A. He never came to my office or never contacted me on the purpose of the subject. I met Mr. Jones one time when I was coming from Spokane across to Shelby and we rode in the same car and that is the time Mr. Jones had charge of the Potlatch and these other properties and at that time he questioned some of our charges in regard to a water line that we had, and he said at that time that he was contemplating [388] bringing a suit against

(Testimony of L. J. Yealy.)

the Ohio Oil Company for an accounting. And I told him how we handled the business from the field and this business all went through Casper and Findlay. And after I had talked to him he didn't say "yes" and he didn't say "no"; he seemed to be satisfied, and he never started any suit, so I took it for granted Mr. Jones was satisfied with the explanation I gave to him about the charges.

Q. Do you remember about when that was when you were on the train, what year?

A. It was sometime between 1922 and 1925, or sometime in there.

Q. Was it shortly after you went into the—was it the time Troy Sweet Grass had the properties or Potlatch and Inland had the properties?

A. Well, I don't remember just when they made the charges, although I had these photostatic copies and the like in my office that I could have told at the time but I can't remember just when they made those charges, when they were consolidated or whatever they done.

Q. Did he ever file or make—did Mr. Jones ever file or make any written complaints to your office?

A. Not to my memory.

Q. And he never came to your office in Shelby?

A. He never came to the office for that business. He [389] has been to the office but it was personal business he was there on on his own.

Q. You testified Mr. Gerlough did come to the office from time to time?

(Testimony of L. J. Yealy.)

A. Mr. Gerlough use to come to our office when he had some question to ask on some charges.

Q. When is your best recollection of the first time he ever came to the office?

A. I couldn't tell. Mr. Gerlough lived there in town and he used to come there sometimes maybe on business and sometimes maybe to visit or something but I couldn't tell the first time Mr. Gerlough ever came to our office.

Mr. Everett: You may take the witness.

Cross-Examination

By Mr. McCabe:

Q. Mr. Yealy, since the time you discussed this matter with Mr. Jones have you ever talked this matter over with any persons at all?

A. No, sir, not with the Troy Sweet Grass people.

Q. Have you talked it over with anyone?

Mr. Everett: Of course, he has talked to me and Mr. Donovan; is that what you are getting at. We have talked to him the same as you have as a [390] witness.

Q. (By Mr. McCabe): Let him answer my question.

A. Yes, I have talked to Mr. Donovan.

Q. And how long ago was that?

A. That I talked to Mr. Donovan?

Q. Yes. A. Oh, two or three weeks ago.

Q. Now up to the time you talked to Mr. Donovan two or three weeks ago you never have discussed the matter of these claims of the Potlatch

(Testimony of L. J. Yealy.)

Oil and Refining Company and the Inland Empire Oil and Gas Syndicate which they claim to have against the Ohio Oil Company? A. No, sir.

Mr. McCabe: That is all.

Mr. Everett: That is all, Mr. Yealy.

The Court: Mr. Everett, if you have a number of witnesses, we can run until 12:30 and then come back at 2:00, and if that would facilitate your examination of witnesses and introduction of testimony. You figure on finishing today?

Mr. Everett: I appreciate that. We will make an effort to finish by 12:30, your Honor.

The Court: Oh, well, then go ahead. I will stay here until 1:00 if you like to finish now if you can.

Mr. Everett: Defendant offers in evidence Exhibits P, Q, R, and S, and so marked, being certified copies of the [391] death certificates of Mr. F. E. Hurley, Mr. Frank B. Firmin, Mr. John McFayden, and Mr. A. M. Seller.

Mr. McCabe: To which we object on the grounds it is repetition; the deaths of all of these persons has been admitted and stipulated and filed in the record in this case and it is merely——

The Court: Well, I don't know, the deaths mentioned here and the testimony taken here and I don't know that it has been stipulated. Did you enter into a stipulation these persons died on a certain date?

Mr. Everett: One or two are covered but I wanted to be sure. This is the burden I have.

The Court: They may be received in evidence and no question can be raised on them.

Whereupon said Defendant's Exhibits P, Q, R, and S, offered and received in evidence, are a part of this record.

Mr. Everett: Our next order of procedure we have two depositions, those of A. M. Gee and Mr. Luke, and Mr. Donovan will take care of those depositions, and we will try to handle it in a fashion of considerably shortening it by giving a summary of it and let Mr. McCabe——

Mr. McCabe: I will be willing to extend the same gracious courtesy extended to me by counsel when we were presenting our testimony, and consent that the depositions of [392] A. M. Gee and Kenneth Luke be admitted in evidence subject to the available objections except the objections to the form of the question.

Mr. Donovan: May we have the deposition of K. G. Luke opened, your Honor?

The Court: Yes.

Mr. Donovan: The defendant offers in evidence the deposition of Mr. K. G. Luke or Kenneth G. Luke. I don't suppose the court wants it read?

The Court: No, it isn't necessary.

Mr. Donovan: Does the court desire a statement what its substance is?

The Court: Yes, you might state the substance.

Mr. McCabe: It may be stipulated the deposition may be entered in accordance with my statement.

The Court: What is it?

Mr. McCabe: I have said I will make no objections so now I stipulated the deposition may be entered subject to any objections available to the respective parties except the form of the question.

Mr. Donovan: The deposition was taken in Spokane, Mr. McCabe being present and examining the witness. Mr. Luke was one of the organizers of Troy Sweet Grass Oil Syndicate. He was secretary of the Troy Sweet Grass Oil Syndicate, I believe he indicates until the fall of 1923 and he [393] was active in its affairs and gathered for Troy Sweet Grass all the oil and gas leases in the Kevin Sunburst field, including those it had and including all those in the contract dated June 15, 1922, between Troy Sweet Grass Oil and Gas Syndicate and the Ohio Oil Company. He testified in that connection the statements rendered to Troy Sweet Grass up until its interest in these leases and this contract was assigned in 1923 have been offered in evidence, these statements. In that connection the court will observe that certain charges that are now disputed by the plaintiffs appear in those statements.

Mr. Luke testified that during the period he was connected with Troy Sweet Grass Oil Company or Oil Syndicate there were no objections made by Troy Sweet Grass Oil Syndicate to any of these charges, that the operations were satisfactory and the accounting was satisfactory, at least as far as he knows, and he was secretary up until I believe about October, 1923. I think that is sufficient to

say. We are offering that partly on the construction of the contract by the parties to the contract.

The Court: Do you have another deposition?

Mr. Donovan: We have another deposition. We offer in evidence the deposition of Mr. A. M. Gee, which was taken on written interrogatories and cross interrogatories. If I may do so, I will briefly state that. [394]

Mr. McCabe: I understand the same ruling of the court it may be admitted subject to the same objections of the respective parties except as to the form of the question.

The Court: All right.

Mr. Donovan: That is satisfactory. The deposition of Mr. Gee was taken at Findlay, Ohio, on written interrogatories. He is now chief counsel for the Ohio Oil Company and living at Findlay. In 1922 he was division counsel for the Ohio Oil Company and his office was at Casper. On June 15th, 1922, or the day before, he and Mr. Hurley came to Shelby because of new interests in the Kevin Sunburst field. The Sunburst Oil and Gas Company discovery well had just come in I think on June 5th, 1922, and was deemed to be a commercial producer. He and Mr. Hurley met with A. M. Sellery, who was the lease man for the Ohio, and they were told by Mr. Sellery that he had contacted Mr. Jones and made sort of a tentative agreement, verbal tentative agreement, with Mr. Jones, and told him the substance of it. On the morning of June 15th, 1922, Mr. Hurley and Mr. Gee went over to the Troy Sweet Grass office and met Mr.

Jones and went over the matter with him along the lines which Mr. Sellery had said had been agreed to or tentatively agreed to and they reached an agreement with Mr. T. P. Jones on all terms that were to go into the operating agreement. It was to be operated upon a basis of 55% to the Ohio and 45% interest in the leases to Troy Sweet Grass with the Ohio [395] furnishing all the charges and depending upon the production or salvage for reimbursement. Mr. Gee, when that was agreed to in the presence of Mr. Hurley, now deceased, and in the presence of Mr. Sellery, now deceased; Mr. Gee went back to his office and drafted the contract. And then returned, I believe Sellery went with him, and then returned to the Troy Sweet Grass office, and went over the matter with Mr. Jones, and the contract was in all respects found satisfactory, and it was executed on behalf of Troy Sweet Grass by Mr. T. P. Jones, President, and Mr. K. G. Luke, as Secretary, and executed on behalf of the Ohio by Mr. Hurley, Vice President.

There was no objections raised to the language by Mr. Jones. There was no rewriting of the contract, and there was no discussion along the lines that only charges within the four corners of the lease could be made. The language of the contract is that all costs of development and operation shall be paid by the Ohio Oil Company and 45% thereof charged to Troy Sweet Grass Oil Syndicate, and the contract expressed, the written contract is identical with the terms of the verbal agreement, and there was no objection to the written contract and it was

executed that way. It was executed the same day and there were no long discussions about it. Mr. Gee also covers the fact that Mr. Hurley is dead, Mr. Sellery is dead and Mr. Firmin is dead to his personal knowledge. I think that about summarizes it. [396]

Mr. Everett: The only further thing, Mr. Donovan, is Mr. Gee testifies contrary to Mr.—the proposed testimony of Mr. Jones as to the form of the contract and as to the wording the defendants here say was a special wording, and Mr. Gee says that wording came from contracts that he had drafted earlier and he attaches to his deposition and makes a part thereof an agreement dated June 16th, 1922, between the Sunburst Oil and Gas Company and the Ohio Oil Company, which is the day following the agreement with Mr. Jones' Syndicate, and he also attaches photostatic copies of a contract of September 15, 1920, which is two years prior that has the identical wording in it that appears in the contract in suit. Now I take it, Mr. McCabe, you have no objection to these contracts not being the originals?

Mr. McCabe: Oh, no, those copies are attached to the deposition of A. M. Gee are copies of the original.

Mr. Everett: That is correct.

The Court: What is the purpose? Is that informing Mr. Jones and anybody else interested in the kind of contracts the Ohio were entering into in that field?

Mr. Everett: No. Mr. Jones testified certain

wording in the Troy Sweet Grass contract was put in there at his special instance and request and Mr. Gee says that is not so; he says he drafted these contracts: "I drafted these contracts and I followed the same wording I have been using [397] for two years prior to that." And here is the contract to show.

The Court: I see it.

Mr. Everett: Mr. McCabe is raising no objection insofar as these contracts not being the original.

Mr. McCabe: That is true as to the correctness of those exhibits, of those photostatic copies referred to in Mr. Gee's deposition; those are true copies.

Mr. Everett: What I am asking about is the best evidence rule; you are not going to insist on this?

Mr. McCabe: No, they are secondary evidence. Of course, there are other legal questions.

Mr. Everett: I understand you reserved your other objections.

Mr. Donovan: We have had a number of stipulations admitting facts that are pleaded in the defendant's answer and I presume they ought to be offered in evidence. We offer in evidence the stipulation filed in this case November 7th, which was drawn and executed at Mr. McCabe's request, defining the respective positions with the Ohio Oil Company which Mr. Sellery, Mr. Yealy, Mr. McCracken, Mr. Billstone, Mr. Firmin and Mr. Hungerford and Mr. McFayden, and the period that they held these respective positions.

Mr. McCabe: No objection.

The Court: Is it in the case in any way?

Mr. McCabe: It was filed in this court in November, [398] 1949.

The Court: They may be received in evidence.

Mr. Donovan: We offer in evidence stipulation of facts admitted which was filed in this court August 29th, 1949, and contains four pages and ten paragraphs.

Mr. McCabe: No objection. I think they are already a part of the record.

Mr. Donovan: Well, some parts are already a part of the record. We offer in evidence a stipulation—no, this not a stipulation. It is additional facts admitted by the plaintiffs consisting of seven pages and filed in this court December 14th, 1949.

Mr. McCabe: No objection.

The Court: It may be received.

Mr. Donovan: Pursuant to the rules of procedure the defendants admit the plaintiffs' Potlatch Oil and Refining Company certain interrogatories, 10 interrogatories, 9 of which have been answered and the 10th one counsel filed objections to it. I offer in evidence the interrogatories and answers so far as given which include statement of monthly payments made by the Ohio Oil Company to Potlatch Oil and Refining Company during the period of the Ohio's operations.

Mr. McCabe: No objection.

The Court: It may be received in evidence.

Mr. Everett: Mr. McCabe, will you also [399] stipulate that the same payments were made at

about the same time in so far as Inland Empire Oil and Gas Syndicate is concerned?

Mr. McCabe: Approximately.

Mr. Donovan: You mean approximate time?

Mr. McCabe: Yes, there is no objection to that. That is correct. That is the facts.

The Court: It may be understood.

Mr. Everett: We offer in evidence Defendant's Exhibit T, being a certified copy of the dissolution of Troy Sweet Grass Oil Syndicate, which is acted on July 18th, 1925, and properly certified to by the County Clerk and Recorder of Toole County, Montana.

Mr. McCabe: We have no objection. It is admissible.

The Court: It may be received in evidence.

Mr. Everett: To corroborate Mr. Gee's testimony we offer Defendant's Exhibit U; it is a contract dated September 15, 1921, between the Ohio Oil Company and Blackstone Petroleum Company.

Mr. McCabe: To which we object upon the grounds and for the reason that the exhibit is incompetent, irrelevant and immaterial; no proper foundation has been laid for its admission; it relates to a collateral contract not affecting any of the parties to this action or affecting the land involved in this action.

The Court: What is it? What is the purpose of it? [400]

Mr. Everett: It has the identical wording that the suit contract has and that the other contracts have that are attached to Mr. Gee's deposition.

The Court: Then it would have some reference to the deposition of Mr. Jones in respect to the language he says he proposed?

Mr. Everett: That is right, it would be in conflict, his testimony, and corroborate Mr. Gee's testimony.

Mr. McCabe: But he was not a party to this. If your Honor please, this is purely hearsay evidence.

The Court: Who was not a party?

Mr. McCabe: This is Blackstone Petroleum Company and The Ohio Oil Company.

The Court: That is one of The Ohio Oil contracts?

Mr. Everett: Yes, sir.

The Court: For the purpose of comparison of what was said or in support of what Mr. Gee testified to I think it would be admissible on that point alone. It shows that was the sort of contract Ohio Oil Company was drawing in the field. You have already got two or three others, haven't you?

Mr. Everett: Yes, sir.

The Court: And this is simply along the same line, isn't it?

Mr. Everett: That is right, and there were possibly some more. [401]

The Court: I think that purpose on that purpose alone I will admit it in evidence.

Mr. Everett: That is the purpose for which it is offered, your Honor.

The Court: Yes.

Mr. McCabe: Received subject to my objection? I see no purpose.

The Court: Yes, overrule your objection on that point.

Mr. Everett: Now, to show the general custom in the area with reference to matter of charges I have an operating agreement dated March 1st, 1923, between the Carter Oil Company and John T. O'Neil and F. A. Oulton, covering lands described therein as the SW $\frac{1}{4}$ of Section 2 and the NW $\frac{1}{4}$ of Section 11, Township 35 North, Range 2 West of the Montana meridian. The original agreement I have been unable to locate, your Honor. It is out of the State and I have had diligent search made by the Carter Oil Company and by my company who had an interest in the lease at one time and they have been unable to find it, and I don't know that Mr. McCabe has any objection to this from the standpoint of secondary evidence rule but I would respectfully ask him to waive that.

Mr. McCabe: I don't know. If you made this copy, or, in other words, I don't object——

Mr. Everett: I can state the copy was made from [402] the original that was in our files about fifteen years ago and that is——

Mr. McCabe: Well, as far as its being a copy of this purported agreement I have no objection to that, but I do object to the admission of the exhibit.

The Court: I think you have that in the record already, the charges of other companies; haven't you, some evidence?

Mr. Everett: I don't believe we have.

The Court: Well, that is all really a part of an accounting.

Mr. Everett: It is the matter of custom of the business and the interpretations of the contract itself, and we are offering it to support our position that the wording Mr. McCabe contends is convincing to support our contention it is not ambiguous. Now, I call the Court's attention to this wording at page 5 of Defendant's proposed Exhibit V, it says: "It being extremely understood that the limit of his liabilities shall be the value of his certain production and equipment interests." Now, the way it is stated in the Ohio contract is: "But in no case shall the parties be held beyond his interest in the production or equipment of the lease." It is the same principle said in a different way, and we offer that as being an operating agreement and was entered into on or about the time and by companies not [4033] related in any way to The Ohio Oil Company showing the custom and practice with reference to this type of operations at that place and time.

The Court: Where was the land situated with reference to the land in this suit?

Mr. Everett: The lands in this suit are not, I won't say it is in the same field, your Honor. The lands in suit here are in Township 35 and 36 North, I believe that is correct, and I believe was in range 2 West. These lands are in Township 35 North, Range 2 West. I mean they are all in the same Township and Range or next to the ad-

joining Township and Range of the lands in question. I have offered it in evidence.

Mr. McCabe: The Plaintiffs object to the exhibit offered by the defendants upon the grounds and for the reason that there is no proper foundation laid for its admission; that it is wholly incompetent, irrelevant and immaterial. The terms of the two contracts are not identical. They relate to different parties and to different lands, and it is not a proper method of proving custom in the business, the business practices, if that is the purpose of it. Of course, I make no objection, if your Honor please, or exclude from that objection the proposition that it is a carbon copy and not the original.

Mr. Everett: It is a photostatic copy. [404]

Mr. McCabe: I should say photostatic copy.

The Court: Well, the Court will consider it later subject to your objection.

Mr. Everett: Call Mr. W. H. McGrath.

W. H. McGRATH

was called as a witness, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Everett:

Q. Will you please state your name?

A. W. H. McGrath.

Q. Your present employment?

A. With The Ohio Oil Company.

(Testimony of W. H. McGrath.)

Q. How long have you been employed by The Ohio Oil Company?

A. Since November, 1927.

Q. What is the nature of your employment, the character of your duties with the company?

A. I am in the accounting department.

Q. What part of the accounting department work is in the Casper Division?

A. The Division accounting.

Q. Division accounting at Casper, Wyoming?

A. Rocky Mountain Division. [405]

Q. And you have been employed in that division it would be since 1926? A. 1927.

Q. Did you at my request make a search of all of the old files of The Ohio Oil Company in Casper, Wyoming, relating to operations on the Baker and Sindon leases, that is, the I. H., Irving H. Baker lease, covering the SE $\frac{1}{4}$ of Section 4, SW $\frac{1}{4}$ of Section 3, Township 35 North, Range 2 West, Toole County, Montana? A. I did.

Q. And also covering the Israel Sindon lease embracing the north half of Section 1, Township 35 North, Range 2 West, Toole County Montana?

A. I did.

Q. Did you make a similar search?

A. I did.

Q. Of all files and correspondence relating to those two leases? A. Yes, sir.

Q. In the division office at Casper did you make a similar search for all correspondence with respect to the Oliver O'Hannon lease, covering the east half

(Testimony of W. H. McGrath.)

of the west half and the west half of the east half of Section 26, Township 36 North, Range 2 West, and the Baptise Sindon lease, covering the south half of Section 1, Township 35 North, Range 2 West, and the Newt Haskin lease of Toni Haskin lease it is sometimes called, covering the south half of Section 25, Township 36 North, Range 2 West?

A. Yes, the Oliver O'Hannon, the B. Sindon and Haskin lease. [406]

Q. Yes. A. I did.

Q. You searched all those files?

A. Yes, sir.

Q. In your search of those files did you find any letters of complaint therein with reference to charges made by the Ohio accounting against the interests of Troy Sweet Grass Oil Syndicate?

A. No, sir, I did not.

Mr. Everett: We offer in evidence Defendant's Exhibit W, a map of the Sweet Grass Arch Field, Toole County, Montana, showing thereon the locations of the leases thereon referred to.

Mr. McCabe: For what?

Mr. Everett: For illustrative purposes in connection with the witness here in examination.

Q. Handing you Defendant's Exhibit W——

The Court: That is the one referred to before; it was just marked and received in evidence?

Mr. McCabe: Yes.

Q. Your testimony just given refers to the leases shown on Defendant's Exhibit W, is that correct? A. That is correct.

(Testimony of W. H. McGrath.)

Q. In your search of the files of The Ohio Oil Company in the Casper office did you find any complaint from the Potlatch Oil and Refining Company with respect to the Oliver O'Hannon and the Baptise Sindon leases? A. No, sir.

Mr. Everett: You may have the witness. [407]

Cross-Examination

By Mr. McCabe:

Q. Mr. McGrath, to shorten up the cross-examination, I understand from your testimony that you searched the records and files of The Ohio Oil Company but didn't find what you call any complaints concerning these leases which you have referred to?

A. No, that is not what I testified, Mr. McCabe.

Q. Now respecting those complaints which you were looking for, did you know whether any other complaints had been made and filed in any other offices of The Ohio Oil Company?

Mr. Everett: I object to the question. He examined only the files at Casper.

Mr. McCabe: Division headquarters?

Mr. Everett: Division headquarters at Casper.

Q. You made no search of any other files of The Ohio Oil Company other than those you testified to? A. No, sir.

Mr. McCabe: That is all.

(Testimony of W. H. McGrath.)

Redirect Examination

By Mr. Everett:

Q. And the records in the Casper Division, they also [408] included, did they not, the records which were previously filed in the field office at Shelby, Montana? A. Yes, that is right.

Mr. McCabe: To which we object on the ground and for the reason the witness has not shown himself qualified to answer, no proper foundation has been laid.

The Court: All right, qualify the witness.

Q. (By Mr. Everett): Do you know whether the records of The Ohio Oil Company at Shelby, Montana, were transferred to Casper at any time?

A. They were.

Q. Can you state about when they were so transferred?

A. I would say—that I can't answer correctly but I think it was in 1943.

Q. But you do know they were so transferred?

A. I do know that I have seen them and I went all through them.

Q. And you examined those records so your testimony is the same or included in your testimony in regard to records in the Casper office?

A. Yes, sir, I went through those records.

(Testimony of W. H. McGrath.)

Recross-Examination

By Mr. McCabe:

Q. Mr. McGrath, did you personally handle the moving of those records from the Shelby office to the Casper office? A. No, sir.

Q. You rely upon in your testimony from what is told you by some other third person?

Mr. Everett: We object; he is trying to badger the witness.

The Court: In regard to the correspondence and so forth that were transferred, and I think from his testimony they knew they belonged to the office before they came under him at Casper, is that the situation?

A. That is right, sir.

Q. You could identify them, couldn't you from appearance? A. Yes, sir.

Q. And contents that they belonged to your Shelby office?

A. Yes, sir. I believe they came down in the original file that was in Shelby. They were left in the containers and wrapped and sent to Casper from the Shelby office in their original containers.

The Court: Well, go ahead along that line.

Q. (By Mr. McCabe): I understand from your testimony, and correct me if I am misstating it, that of your own personal knowledge you [410] don't know whether the records from the Shelby office were the same records which you examined at Casper?

(Testimony of W. H. McGrath.)

A. I didn't see the records in Shelby, Mr. McCabe.

Q. So that for your information you rely upon statements made to you by other persons?

Mr. Everett: I object to that——

A. No, I didn't.

Mr. Everett: There is no testimony about statements from other persons. He testified he saw the file and he knew it was the original file that was transferred; and he has not testified those were all the records from Shelby; he testified the records at Casper which included records of the Casper office also included records as he found therein that had been transmitted from Shelby.

Q. Upon that information do you testify that the records that you saw in Casper were the original files of the Shelby office?

A. Because I recognize the type of files that are kept in the field offices.

Q. So that other than the markings on those files which correspond with files kept generally by the company in the field offices you have no other information as to the identity of those records from the Shelby office as being the original records in that office?

A. When you say files, Mr. McCabe, do you mean file [411] cabinets or contents?

Q. I refer to the contents.

A. I recognized the contents as the kind of papers and records we do keep in our field offices.

Mr. Everett: Did you see in there any original

(Testimony of W. H. McGrath.)

letters addressed to Mr. L. J. Yealy by the Inland Empire Oil and Gas Syndicate or the Potlatch Oil and Refining Company?

A. Yes, I did.

Q. (By Mr. McCabe): But still you don't answer my question, other than what you have testified from the appearance of the files in the Shelby office that appear to be files from the Shelby office which were among the files in the Casper office? You don't know whether those files in the Shelby office or in the Casper office which you call or identify as original files from the Shelby office were or were not the original files from the Shelby office?

A. I have no way of knowing that, Mr. McCabe.

Mr. McCabe: That is all.

Mr. Everett: That is all. [412]

JOHN MORRISON

was called as a witness, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Everett:

Q. Please state your name.

A. John Morrison.

Q. Where do you live? A. Findlay, Ohio.

Q. By whom are you employed?

A. Ohio Oil Company.

(Testimony of John Morrison.)

Q. How long have you been so employed?

A. Thirty-two years.

Q. When did you start working for the company? A. 1917.

Q. In the Findlay office?

A. Findlay office.

Q. That is the main office of the company?

A. Main office.

Q. And you are employed there at the present time? A. Right.

Q. What have been the nature of your duties in connection with your employment for The Ohio Oil Company during that period? Just tell us about it in your own words.

A. I have been in the producing accounting department all during this period of time, 32 years.

Q. And what is your present position?

A. Analyst.

Q. What kind of analyst, accounting analyst in connection [413] with production?

A. That is right.

Q. Joint interest accounts?

A. Joint interest accounts.

Q. And the interpretation of contracts and application of accounting principles thereto?

A. Right.

Q. How long have you been doing that type of work? A. Five years.

Q. You have been head of that department for five years? A. Right.

(Testimony of John Morrison.)

Q. And prior to that time were you an assistant in that department?

A. Assistant department head, accounting department.

Q. Assistant accounting department head. Mr. Morrison, I will ask you, referring to Plaintiff's Exhibit W, which I hand you, whether you have checked all of the files in The Ohio Oil Company home office with respect to the leases designated on Exhibit W, as follows: Thomas Anderson, Cora B. Phillips, Harry W. Phone, Oliver Hannon, Knut Kaskin, also known as Toni Kaskin, Isarel Sandan, Baptiste Sandan, and Irving H. Baker? Have you checked all of the correspondence and other files of the company with respect to the accounting under those leases?

A. I have searched those files.

Q. In your search did you find therein any complaints from the Troy Sweet Grass Oil Syndicate with respect to any [414] accounts which were returned to that company during the time it was a joint interest owner under part of these leases?

A. I did not.

Q. In your search of the files did you find any complaint or objections with reference to accounting in the Potlatch Oil and Refining Company, or statements of account, charges, credits, and so forth with respect to the leases designated as the Oliver Hannon and as to the Baptiste Sandan leases?

A. I recall of no objection to the accounting, no, sir.

Q. On those two?

A. On those two.

(Testimony of John Morrison.)

Q. Did you find any in the files, any objection from the Troy Sweet Grass Oil Syndicate with respect to the accounting covering the Knut Kaskin lease, being the south half of Section 25, Township 36 North, Range 2 West?

A. I recall finding no objections.

Q. I have here Plaintiffs' Exhibit D, which are all of the Ohio interest accounts to the Troy Sweet Grass Oil Syndicate. I will hand these to you and ask you if you recognize them as the original statements which were sent to that company on or about the dates indicated therein? A. I do.

Q. And they are the originals?

A. They appear to be the originals.

Q. I will ask you to look at some of these statements, undo them if you like, and state whether the categories or [415] summarization of charges are the same in these accounts as in the subsequent statements of account of Potlatch Oil and Refining Company and to Inland Empire Oil and Gas Syndicate, if you know? Pick out what you consider a representative statement and give us your testimony with reference to those items. Take, for example, the summary sheet for some month there you think is representative.

A. I would say this is one, February 28, 1923.

Q. February 28, 1923, statement to the Troy Sweet Grass Oil Syndicate and it was thereon a summary of charges and credits. Will you please state what categories or items are listed in the

(Testimony of John Morrison.)

summary of charges against the account of Troy Sweet Grass Oil Syndicate?

Mr. McCabe: Your Honor, the statements are the best evidence. They speak for themselves and they are all admitted in evidence, and it looks to me that this is all repetition and wholly immaterial.

Mr. Everett: Well, we don't need to go into it. We can compare the statements. This man is the man who has done the work and I thought you might like to know about it, and he will testify they are the same items in this accounting and subsequent accounting, and if counsel is satisfied——

Mr. McCabe: Just a minute, and which I think it is all repetition and it is not the best evidence. The statements, themselves, are the best evidence of their contents. [416]

Mr. Everett: This testimony is these categories and items here on this account are the same as on the subsequent accounts of Potlatch and to Inland Empire Oil and Gas Syndicate as to the Baker and Sindon leases, is that correct?

A. Correct.

Q. (By Mr. Everett): Were these same items of the charges included in the accounting to Potlatch Oil and Refining Company with respect to the Oliver Hannon and B. Sindon leases?

A. They are the same.

Q. Referring to Plaintiffs' Exhibit E, what do these refer to in your accounting department?

A. Those are the remittance slips.

(Testimony of John Morrison.)

Q. And what is the purpose they accompany the checks, is that right, accompany the remittances?

A. These are made for the purpose of the disbursing department issuing the check therefrom.

Q. And in payment of the amount shown thereon?

A. Right.

Q. And these accompany the monthly statements whenever there is a credit balance?

A. That is right, together with the check.

Q. Do you know of your own knowledge that such a statement accompanied each and all of the transmittals of checks to the Potlatch Oil and Refining Company and to the Inland [417] Empire Oil and Gas Syndicate for each of the months that they had a credit balance? A. They did.

Mr. Everett: I think Mr. Gerlough already testified they received them and I just want to prove we sent them, your Honor.

Q. And those statements were all in substantially the same form as I am showing you in Plaintiffs' Exhibit E? A. That is right.

Mr. Everett: You may have the witness.

Cross-Examination

By Mr. McCabe:

Q. Mr. Morrison, do I understand from your testimony you intend to convey the impression that all statements that were mailed and sent out covering the operations under the operating agreement involved in this action and were sent to Potlatch

(Testimony of John Morrison.)

Oil and Refining Company and Inland Empire Oil and Gas Syndicate were identical in amounts, or, no, identical in items of expenditures charged as appears in the Troy Sweet Grass statements which you just examined?

A. In substance they were the same. The same structure was used in preparing the bills.

Q. And have you made a detailed examination recently of these statements that were mailed to the Potlatch Oil and [418] Refining Company and Inland Empire Oil and Gas Syndicate?

A. I examined a few of them.

Q. Didn't you find there were any charges or items of expenditures listed on subsequent statements given to Potlatch and Inland Oil and Gas Syndicate as to make a substantial difference from the items that appear in the statements issued to the Troy Sweet Grass Oil Syndicate?

Mr. Everett: What are you referring to? You might apprise the witness and tell him to what item you refer, referring to camp expense, water expense.

Mr. McCabe: Well, he said he examined these statements. I want information to see what he knows about it.

Mr. Everett: Do you want him to examine them now, Mr. McCabe? They are right here; he can examine them.

The Court: He can answer the question. It is rather broad and comprehensive and it covers so much territory I don't know whether he can answer

(Testimony of John Morrison.)

it or not; conditions may have arisen from time to time that brings up some other charge or some other thing. It is hardly a fair question. You better rephrase it, if there are actual differences there that are important or material.

Mr. McCabe: The statements speak for themselves so I will withdraw the question, your Honor.

Mr. McCabe: That is all. [419]

Redirect Examination

By Mr. Everett:

Q. Your testimony was the same general charges are the same on both? A. That is right.

Q. On all the accounting on the statements of account? A. Yes, sir.

Mr. Everett: That is all.

The Court: Any further questions?

Mr. McCabe: No further cross-examination.

Mr. Everett: That is all. The defendant rests, your Honor.

Mr. McCabe: Mr. Gerlough, will you take the stand and bring your minute book of the Inland Oil and Gas Syndicate?

Mr. McCabe: This, your Honor, is very short and in fact it is the only witness I have. I have just got an exhibit.

JEAN P. GERLOUGH

resumed the stand and testified as follows:

Direct Examination

By Mr. McCabe:

Q. Mr. Gerlough, you are the same Jean P. Gerlough [420] who testified in this proceeding?

A. That is right.

Q. Will you please produce the minutes of the meetings of the Inland Empire Oil and Gas Syndicate?

A. I have them here.

Q. Have you examined those minutes to determine whether or not there was any written form purporting to be a resignation of Kenneth Luke as a trustee or secretary of the Inland Empire Oil and Gas Syndicate?

A. Kenneth Luke was not, never was a trustee of the Inland Empire; you are thinking of the Troy Sweet Grass.

Q. Now, have you the minutes of the Troy Sweet Grass Oil Company with you?

A. Yes, I have.

Q. Will you please produce them?

A. Yes.

Q. Have you in those minutes any record, what purported to be a record of the resignation of Kenneth Luke as secretary of the Troy Sweet Grass Oil Company?

A. Yes.

Q. And is that record in the form of a letter to the Syndicate?

A. Yes, it is; it is a letter to the Board of Trustees.

(Testimony of Jean P. Gerlough.)

Q. Showing you Plaintiffs' proposed Exhibit X, do you know whose signature that is that appears thereon, there at [421] the right, whose writing it is?

A. It is the signature of Kenneth G. Luke in his own handwriting.

Q. And do your records show what action the board took on the resignation? A. Yes.

Q. And what do the minutes show? If you will just read into the record what the minutes show with respect to the action?

Mr. Everett: Wait a minute. May I see the minutes before you read it for the record?

Mr. McCabe: Yes. I am sorry.

Mr. Everett: What is it you want to show?

Mr. McCabe: To show that the resignation of Kenneth Luke as secretary of the Troy Sweet Grass Oil Syndicate was acted upon and accepted by the board of trustees of the Troy Sweet Grass Oil Syndicate on October 27, 1922.

Mr. Everett: No objection.

Q. And will you read into the record that part of the minutes which shows the action of the board?

A. The resignation of Kenneth G. Luke as secretary of the Syndicate was read and upon motion accepted.

Mr. McCabe: We now offer in evidence Plaintiffs' Exhibit X, being the original resignation of Kenneth Luke as secretary of the Syndicate. [422]

Mr. Everett: No objection.

The Court: It may be received in evidence.

(Testimony of Jean P. Gerlough.)

(Whereupon, said Plaintiffs' Exhibit X, offered and received in evidence, is a part of this record.)

Mr. McCabe: Mark that for identification.

Mr. Everett: What is the purpose of this, Mr. McCabe?

Mr. McCabe: The purpose of this is to contradict the testimony existing in the deposition of A. M. Gee to the effect that The Ohio Oil Company in all its contracts where there were other parties to the contract participated in the expense of the operation and in the proceeds; that all those contracts contain the same provision with respect to limitation of charges, final charges against the other party to the interest in the equipment and the production from the land.

Mr. Everett: We object——

Mr. McCabe: And this purpose this is a court record from the United States District Court from the District of Wyoming, and which is a certified copy of an operating agreement made by the, The Ohio Oil Company and shows in which there was participation in expenses and in proceeds, and this contract has no such clause as testified to by Mr. Gee.

Mr. Everett: Well, we will further object to it. The agreement is dated December 7, 1917, and long prior to [423] this, and he has not shown any connection of Mr. Gee with the company at that time, and I would like to read to the court in con-

nection with that exactly what Mr. Gee said about that. I can't read it the same way Mr. McCabe did.

The Court: It was several years before The Ohio Oil Company——

Mr. Everett: It is five years before the contract with Troy Sweet Grass.

The Court: In another State under different conditions and circumstances. I don't know how that would apply here. Well, let it go in under the objection and we will see, but I don't see any application without showing similar conditions and circumstances. I won't just say peremptorily.

Mr. Everett: We will discuss the law on that on the briefs.

Mr. McCabe: The plaintiffs rest.

Mr. Everett: May it please the court, we would like to present to the court a motion for judgment at this time, and we have dictated it and it is being prepared now, and if we could come back at two o'clock and present it to the court, we would like to do that, or two-thirty.

The Court: Oh, well, you better make it two thirty and you can present it and the court will take it under advisement. Court will stand in recess until 2:30 this afternoon. [424]

(Court resumed, pursuant to recess, at 2:30 o'clock p.m., at which time all counsel were present.)

The Court: I suppose both you gentlemen want to make a motion, don't you? Do you want to make

your motion for the plaintiffs, Mr. McCabe; you want to move first?

Mr. McCabe: At this time, if your Honor please, the plaintiffs move for judgment in favor of the plaintiffs and against the defendants for a judgment of accounting to be made by the defendant to the plaintiffs in accordance with the prayer in plaintiffs' complaint, upon the grounds and for the reasons that under the evidence introduced and uncontradicted, such evidence together with the stipulations of fact and the admissions of fact in the respective pleadings of the parties show clearly that the plaintiff is entitled to the judgment prayed for, and for the further reason that the so-called, that the affirmative defenses of laches, accounts stated and limitations of actions have been established by the evidence introduced here without objection are wholly devoid of merit.

The Court: Now Mr. Everett.

Mr. Everett: May it please the court, I have prepared a motion in writing and have filed it with the clerk. If the court wishes me to read it, I will do so, but if the filing is sufficient——

The Court: I would like to hear you read [425] it.

Mr. Everett: "Comes now the defendant"——

Mr. Everett: You don't need to take this, Mr. Reporter.

(Whereupon, Mr. Everett read the motion.)

Mr. Everett: Let the record show I have handed Mr. McCabe a copy of the motion.

The Court: Very well, both motions will be taken under advisement. I suppose you gentlemen would like about thirty days on the side for briefs after receipt of the transcript.

Mr. McCabe: Your Honor, I would like thirty days if the plaintiff may have it to submit a brief.

The Court: What is that?

Mr. McCabe: I would like thirty days on behalf of plaintiff to submit a brief.

The Court: Will thirty days be enough?

Mr. Everett: Well, off the record, I think we can do it within thirty days after we get the plaintiffs' brief. I have to make a trip to Washington and one to Chicago and expect to be out of town most of the time.

The Court: It will be some time before I would get around to considering this case in view of the engagements I have and other cases to decide already on hand. If you need more than that, of course, I will grant an extension and you may have such time as you feel you need. If you need more than [426] thirty days just send a note, and the same with Mr. McCabe if he needs more than thirty days.

Mr. Everett: Would it be satisfactory to say plaintiffs have until February 1st to file their brief and we have thirty days thereafter?

Mr. McCabe: That is agreeable.

Mr. Everett: He says that is agreeable.

The Court: That will depend on when you receive the transcript. You won't want to commence the brief until you receive the transcript.

Mr. Everett: Let's put it this way, your Honor, thirty days after he receives the transcript he shall have thirty days after that to file his brief and we shall have thirty days after receipt of copy of his brief for defendants.

The Court: And then we will give Mr. McCabe twenty days for reply.

Mr. McCabe: Yes, your Honor. Thank you.

The Court: Court is adjourned.

(2:45 o'clock p.m., December 23, 1949.) [427]

Reporter's Certificate

United States of America,
State of Montana—ss.

I, Sidney O. Smith, do hereby certify that I am the Official Court Reporter in the above-entitled court; that the foregoing and annexed transcript is a full, true and correct transcription of the testimony taken and proceedings had, which was taken in phonography and transcribed in longhand by me, in the case of Potlatch Oil and Refining Company, a corporation, etc., Plaintiffs, vs. The Ohio Oil Company, a corporation, Defendant, at Great Falls, Montana, on December 22nd and 23rd, 1949.

Dated this 14th day of February, 1950.

/s/ SIDNEY O. SMITH,
Official Court Reporter.

[Endorsed]: Filed February 14, 1950. [428]

[Title of District Court and Cause.]

DEPOSITION OF T. P. JONES

Be it remembered that pursuant to stipulation of the above-named Plaintiffs and Defendant, a duly certified copy of which stipulation is hereunto annexed, and on the 14th day of November, 1947, at Spokane, State of Washington, before me, Geo. Stewart, a Notary Public in and for the State of Washington, duly appeared T. P. Jones, also known as Thomas P. Jones, a witness produced on behalf of the Plaintiffs in the above-entitled action now pending in the above-entitled court, who, being first by me duly sworn, upon oath was then and there examined and interrogated by E. J. McCabe, of counsel for said Plaintiffs, and by W. H. Everett and Louis P. Donovan, of counsel for the Defendant, and testified as follows: [430]

T. P. JONES

being first duly sworn to tell the truth, the whole truth and nothing but the truth in the above-entitled cause, was examined as a witness on behalf of the Plaintiffs, and testified as follows:

Direct Examination

By Mr. McCabe:

Q. Please state your name, age and place of residence.

A. Thomas P. Jones, eighty-five, Boville, Idaho.

Q. Are you also known as T. P. Jones?

(Deposition of T. P. Jones.)

A. T. P. Jones.

Q. And in signing your signature or affixing your signature, do you use the initials T. P. Jones?

A. Yes.

Q. Mr. Jones, were you ever in Shelby Montana? A. I was.

Q. Did you ever have a place of residence at Shelby, Montana? A. I had an office there.

Mr. Everett: Before we go on, I want to state this:

Mr. McCabe: Yes, go ahead.

Mr. Everett: For the purpose of the record, the Defendant Ohio Oil Company wishes to state that all plaintiffs herein have heretofore stipulated that each and all of the defendant's objections as to relevancy, materiality and competency of the testimony of plaintiffs' witness T. P. Jones have been expressly reserved. I understand that upon any trial in which said deposition is permitted to be used, that the presentation thereof will be by question so that [432] defendant will thereby be afforded and shall have the unrestricted and unqualified right to make any objection it wishes as to each such question so presented, this without prejudice to any right defendant may have or wish to assert as to the entire deposition. For example, the entire deposition should be stricken from the files if it appears therefrom or from the files, pleadings or records in this case that this is an attempt to open up a stated account or to vary the terms of a written contract by parol evidence, or that it

(Deposition of T. P. Jones.)

violates the rules which do not permit testimony as to conversations or transactions with any deceased employee or agent of the defendant, or that it appears that the transactions complained of have been ratified or confirmed, or that the statute of limitations or laches or stale demand has barred any right of recovery, or that plaintiffs are estopped, or if for any reason such deposition should be stricken in its entirety. If this is a correct statement of our understanding, Mr. McCabe, then we do not expect to assert our specific objections to each question as it is asked and as the testimony is given, and I think the deposition can be materially shortened.

Mr. McCabe: That is my understanding, Mr. Everett, but subject, of course, that I am not waiving any right as to a waiver by you of the form of objection as to the form of the objection as stated in the stipulation.

Mr. Everett: The form of question, you mean?

Mr. McCabe: Yes. I mean the form of question.

Mr. Everett: Yes, the stipulation does provide that we may object to the form of the question.

Mr. McCabe: Yes. I am not waiving the provisions of [433] the stipulation.

Mr. Everett: We understand that we are to make our objections as to the form of the questions and that you will take care of them now.

Q. (By Mr. McCabe): Where was your residence at the time that you had the office in Shelby, Montana?

(Deposition of T. P. Jones.)

A. My home residence was in Bovill, Idaho.

Q. That has always been your home residence?

A. For forty-odd years.

Q. Did you ever hear of Troy-Sweet Grass Oil
Syndicate? A. I did.

Q. Were you ever connected with that syndicate
in any capacity? A. I was.

Q. What was your connection?

A. I was a trustee and president of it, manager.

Mr. Everett: We object to the form of the ques-
tion until you establish the time and place.

Q. (By Mr. McCabe): And during what years
would you say you were connected with the Troy-
Sweet Grass Oil Syndicate?

A. In the late fall of '21 until it was dissolved
in, I think, '23 or '24.

Q. And by "'21," do you mean the year 1921?

A. 1921.

Q. While you were connected with that Troy-
Sweet Grass Syndicate and on or about the 15th
of June, 1922, did you sign the written instrument
designated "Operating Agreement"?

A. I did.

Q. And was this instrument one in which The
Ohio Oil Company was a party? [434]

A. Yes.

Mr. Everett: We assume that you are going to
introduce this instrument in evidence?

Mr. McCabe: Yes.

Mr. Everett: Otherwise, we want to raise the
objection that it is not proper examination.

(Deposition of T. P. Jones.)

Mr. McCabe: Yes, I am going to introduce it. I am just leading up.

Q. Showing you a writing marked for identification Plaintiffs' Exhibit 2, I wish you would examine that. Have you examined the instrument?

A. I have.

Q. And also examined the document attached to it and designated "Assignment"?

A. Yes, sir.

Mr. Everett: May I see those?

Mr. McCabe: Yes.

(Exhibit handed to counsel.)

Q. Did you sign the original of which the exhibit is a copy? A. I did.

Q. At the time of the signing of the original of the exhibit were you acquainted with A. M. Sellery of the Ohio Oil Company?

A. I never saw him before the day I signed it.

Q. But on the date that you signed it, did you meet him at that time? A. Yes, sir.

Q. Did you know a Mr. F. E. Hurley?

A. I met him the same day.

Q. And did this Mr. Hurley purport to be with the Ohio [435] Oil Company? A. He did.

Q. Did you on the same day meet a man by the name of G. Gee, who purported to act as attorney for the Ohio Oil Company?

A. Yes, I did; him and Mr. Hurley.

Q. And at that time did Mr. Hurley and Mr. Gee come in together?

(Deposition of T. P. Jones.)

A. Yes, they came in my office together.

Q. Where did you see them?

A. They came in to my office to see me.

Q. And by your office, do you mean the office of the Troy-Sweet Grass Oil Syndicate?

A. Yes, in Shelby, Montana.

Q. Was Mr. Sellery there on that day with Mr. Hurley and Mr. Gee at any time?

A. He either came right in with them or right after them. I wouldn't say which.

Mr. Everett: I think if you could ask him about the signature of those parties there, the rest of this is wholly immaterial, Mr. McCabe.

Mr. McCabe: Yes, I will. I was just leading up to that.

Q. Did Mr. Hurley sign the original of the exhibit on that date?

Mr. Donovan: Mr. McCabe, we will have to object to that as leading. Your questions are quite leading.

Mr. McCabe: Well, of course, this is not a trial before the Court. I think the leading question is not very material, but I will try to conform to your suggestion. [436]

Q. Do you remember who signed the original of this exhibit with you at the time?

A. Mr. Hurley.

Q. And do you know of anyone else that signed it at that time?

A. Why, I think Mr. Sellery witnessed it; something like that.

(Deposition of T. P. Jones.)

Mr. Everett: That shows from the exhibit itself, doesn't it?

Mr. McCabe: Yes, it shows.

Q. Showing you the exhibit consisting of the operating agreement and the assignment, did you personally see Mr. Hurley and Mr. Sellery, whose name appears on there, sign the original?

A. Well, I was right in the room when we all signed it. I don't know as I was looking right at them, but they signed it right there.

Q. And after the operating agreement, the original of the Exhibit 2, designated "Operating Agreement" and the "Assignment" were signed by you and the other gentlemen whom you stated, what became of the original?

A. The original lease?

Q. No, the original operating agreement and the assignment, of which Exhibit 2 are certified copies.

A. One copy was retained by them and one copy was put in our files.

Q. And was the original typewritten copy retained by the Ohio Oil Company? A. Yes.

Q. And a carbon copy retained by the Troy-Sweet Grass? [437]

Mr. Everett: I object to that as a leading question. —

Q. (By Mr. McCabe): Was there a carbon copy of the agreement——

Mr. Everett: We object to the form of the ques-

(Deposition of T. P. Jones.)

tion. The witness already testified that it was executed in duplicate and that each of them kept a copy.

Mr. McCabe: All right.

Q. And examining Plaintiffs' Exhibit 2, will you say that that exhibit, consisting of the documents marked "Operating Agreement" and "Assignment," was a copy of the original operating agreement and assignment which was signed on that date?

Mr. Everett: That is wholly incompetent for the reason that the instrument speaks for itself. It is the best evidence.

Mr. McCabe: I think it is. We now offer in evidence as part of the examination of this witness this Plaintiff's Exhibit No. 2.

Mr. Everett: No objection, except the general objection, as already stated.

Mr. McCabe: Yes, I understand.

(Whereupon, a Photostatic copy of an instrument entitled "Operating Agreement" and "Assignment," marked Plaintiffs' Exhibit 2, was received in evidence and is hereto attached and made a part hereof.)

Q. (By Mr. McCabe): At the time of the signing of the original instrument of which Plaintiffs' Exhibit 2 purports to be copies, did any one of the gentlemen direct your attention to any part of the operating agreement?

(Deposition of T. P. Jones.)

Mr. Everett: Wait a minute. Defendant objects to this [438] question and to any testimony in response thereto or any similar or related line of questioning and testimony for the reason that T. P. Jones, individually, is one of the assignors or owners or trustees of some of the leases and properties described in Plaintiffs' Exhibit 2 and in the Troy-Sweet Grass Syndicate, and is not competent to testify to any oral conversation, direct transactions or oral communications with Mr. F. E. Hurley, Mr. Art Sellery or Mr. John McFadyen, all of whom are deceased. In support of this objection, allow me to state that these men were agents and employees of the Ohio Oil Company and are now and have for many years been deceased. We also object to this question and to any testimony in response thereto and to any similar or related line of questioning and testimony for the reason that the written agreement which has been introduced in support of this deposition by plaintiffs shows that there was an agreement in writing between the parties and their representatives and successors in interest, no mistake or imperfection of the writing has been shown by the pleadings, nor is the validity of the agreement in fact in dispute. Mr. McCabe, may it be understood that our objections as to the incompetency of Mr. Jones, and also our objections as to the endeavor to vary the terms of a written instrument by parol testimony, that those two objections go to all questions and testimony offered?

(Deposition of T. P. Jones.)

Mr. McCabe: Yes, that is my understanding. That is agreeable.

(Last question read as follows:)

“Q. At the time of the signing of the original instrument of which Plaintiffs’ Exhibit 2 purports to be copies, did anyone of the gentlemen direct your attention to any part [439] of the operating agreement?”

Mr. Everett: We further object that the question is leading. If you can frame your questions so that they are not leading, Mr. McCabe, it will be helpful.

Mr. McCabe: I prefer to let it stand.

Q. Can you answer?

A. Why, yes. After he had rewritten the contract a couple of times, he brought it in and pointed out to me where he had put in the provisions that I asked for.

Q. Will you please refer to the exhibit or that part of the exhibit designated “Operating Agreement,” the part in Paragraph Three there——

Mr. Everett: Let’s not lead him. Let the witness do the testifying.

Mr. McCabe: That is not a leading question.

Q. Will you please indicate on that instrument what particular clause or phrase, or part of it, was called to your attention at that time. Just mark it with parentheses in pencil.

A. After rewriting——

(Deposition of T. P. Jones.)

Mr. Everett: Well, Mr. Jones, he asked you just to mark it.

Q. (By Mr. McCabe): If you will, just mark it in pencil.

A. All right. I will try that. You want a pencil mark on the part he drew my attention to. (Instrument so marked) I think that is it.

Q. Now, will you please read the part which you stated was specifically called to your attention by that person at that time. Just read it so it will go into the record.

Mr. Everett: It is understood our objections go to all [440] of this?

Mr. McCabe: Yes.

A. (Reading): "but in no case shall said party of the first part be finally held or charged beyond its share or interest in the production and equipment from, in, or upon said lands."

Q. (By Mr. McCabe): Now Mr. Jones, on the date that this instrument, the original of Plaintiffs' Exhibit 2, was signed by the parties named therein, did you have any conversation with Mr. Hurley and Mr. Gee with reference to entering into any arrangements for the drilling and development of lands of the Troy-Sweet Grass Oil Syndicate?

A. I did.

Q. And was that on the same day as the agreement was signed?

Mr. Donovan: I object to this as leading.

Mr. Everett: Let's let the witness testify, Mr. McCabe. You are insisting that we not have an ob-

(Deposition of T. P. Jones.)

jection to the form of the question, but still you insist on making the questions leading.

Mr. McCabe: I don't think that is leading.

Mr. Everett: Of course it is leading. You are on direct examination now. On cross-examination we can lead him all over the place, but you can't.

(Last question read.)

A. It was.

Q. (By Mr. McCabe): Now, what did Mr. Hurley or Mr. Gee in the presence of yourself and Mr. Gee and Mr. Hurley say to you in connection with——

Mr. Donovan: That is objected to as being uncertain. [441] It doesn't designate the person. It is also uncertain as to the place where the alleged transactions or conversations were had.

Q. (By Mr. McCabe): Where was the original of Plaintiffs' Exhibit 2 signed?

A. In my office in Shelby, Montana.

Q. And at that time who was present?

A. Mr. Hurley, me, Mr. Luke, my secretary—the secretary of the Troy-Sweet Grass and this other gentleman, Mr. Sellery. Mr. Hurley and Mr. Gee came in there and asked me to know if I could and would make an operating agreement on some land held by my company, that I represented, and I told them——

Q. Just a minute. Who was it asked you that—Mr. Gee or Mr. Hurley?

(Deposition of T. P. Jones.)

A. Mr. Hurley, after they introduced themselves.

Q. And what did you answer?

A. Well, I asked them—They described the land that they wanted to make an operating agreement on. I couldn't describe them right here now. And I told them that I had contacted the California a couple of times prior to that, or they had contacted me and wanted some lands on a fifty-fifty operating agreement, and presented me with a copy, which I read, and I objected, or told them what I would do; I would dictate the terms of the contract.

Q. What did you say to them in response to their inquiry whether you would be willing to enter into a deal?

A. Well, I told them that I would under my terms.

Q. Then what did they say to you?

A. They asked me what my terms were, and I explained them [442] to them.

Q. What did you tell them the terms were that you wanted?

A. I told them that I would enter into an agreement with them, but not where any expenses would be charged to this land off of the lease, of Findlay, Ohio, or any place else off of that lease, and so then, after a conversation of quite a while, why, Mr. Hurley, or one of them spoke up and said, "Well, the charges wouldn't be in excess of probably ten per cent," and I told them, "All right, gentlemen, if that is all it will be, I will give you

(Deposition of T. P. Jones.)

forty-five per cent and you can take fifty-five per cent, and you can pay the expenses, and put that into a lease, and we can make an agreement," and Mr. Gee said he would write up that kind of an agreement. I said, "There is a typewriter here and paper." He says, "I have a typewriter right over here, and I will go over and write it," which he did, and when he came back he had an operating agreement written up in duplicate. I think it was triplicate.

Q. A moment ago you said that in this conversation you told them you would give them the forty-five per cent, and also you said you would give them the fifty-five per cent.

A. No, I said I would give myself forty-five per cent and them fifty-five per cent.

Q. That is what I wanted to get straightened out.

A. If they would bear all of the expenses, in place of a fifty-fifty, and charge me only what operating expense was incurred right on the lease, and they said——

Q. Now, just a moment. Was there any particular form of expression that you used at that time as designated the [443] expenses chargeable?

A. Well, I said that their expenses would be charged all over the country, their overhead, the accounting and everything else would be charged up against that lease, and I had no way of keeping account of that.

(Deposition of T. P. Jones.)

Q. Was that under the fifty-fifty operating agreement? A. That was the fifty-fifty.

Mr. Everett: We object to the form of the question there again. There is no fifty-fifty operating agreement here in evidence. If you are going to question him about some other contract, let's get it out here, Mr. McCabe; otherwise, we will have to object to the form of the question and insist that the Court consider our stipulation with you as not in effect because you are not following it. Certainly, we are not going into the trial of this case with any sort of an understanding that we won't object to the form of the question and let you proceed in a manner that is absolutely contrary to that agreement and at the same time try to hold us to it.

Mr. McCabe: Well, the witness testified that they suggested fifty-fifty and he said he wouldn't go into that agreement.

Mr. Everett: You are asking him about a fifty-fifty agreement, but there is no such agreement in evidence.

Q. (By Mr. McCabe): Now, Mr. Jones, did you, at the time when they first approached you, or, that is, when Mr. Hurley and Mr. Gee first spoke to you about any deal concerning the Troy-Sweet Grass Syndicate leases or lands—did they have a form of agreement with them?

A. Yes, they had some blank forms, fifty-fifty. [444]

(Deposition of T. P. Jones.)

Q. And was that agreement they had commonly called, a form known as a fifty-fifty operating agreement?

Mr. Donovan: We object to this as leading; object also on the formal ground that all oral negotiations are deemed to be merged in the written contract. Prior oral negotiations and statements are entirely irrelevant and immaterial.

Mr. McCabe: Just answer the question.

(Last question read.)

Mr. Everett: We object on the further ground that the witness has not been qualified as an expert to testify as to what was the commonly known form or any other form of contract.

Q. (By Mr. McCabe): Just a moment. Mr. Jones, this first written form that they submitted to you, did they call it or designate it by any name?

Mr. Everett: I object to that, too.

A. Fifty-fifty operating agreement, they told me it was.

Mr. Donovan: That is objected to because that is leading.

Q. (By Mr. McCabe): Now, answer the question again.

A. They called it a fifty-fifty operating agreement.

Q. Who called it that? A. Mr. Hurley.

Q. At that time did you make any objection to that type of agreement? Did you state to them that you had any objection to that type of agreement?

A. I did.

(Deposition of T. P. Jones.)

Q. What did you tell them?

A. I told them that I had objected to the California a couple of days prior, and I objected to theirs. I wouldn't go into that kind of an agreement with anybody. [445]

Q. Now, when you outlined or stated to them, as you testified, the terms of the deal that you would go into with them, did you mention in describing the expenses, or did you describe the types of expenses that you would be willing for the company to pay their share of?

Mr. Donovan: This also is objected to as leading and suggestive.

Mr. Everett: Mr. McCabe, let me ask you a question now. Just what is your understanding with reference to this stipulation as to the form of questions?

Mr. McCabe: I think if it is a leading question, I think you have got to object to it. If it is not leading, your objection need not be made.

Mr. Everett: When we state an objection to the form of your question at this time, then if this deposition is permitted to be used by the Court, then the Court will then sustain our objection or strike the answer?

Mr. McCabe: Yes, as to the form.

Mr. Everett: I haven't practiced in Montana. I don't know how you gentlemen operate up there.

Mr. McCabe: Well, you better be familiar with the Montana practice.

(Deposition of T. P. Jones.)

Mr. Everett: If you are trying to put me in a hole——

Mr. McCabe: I was just going to explain it as a matter of courtesy.

Mr. Everett: I want it explained. I have got to study this deposition when I get it, and if I knew what the practice was there, I could.

Mr. Donovan: As to the form of the question, the objection must be made at the time the deposition is taken, or [446] otherwise, it is deemed waived. If it is objected to at the time of the deposition, then that objection can be urged at the trial. That is all it is meaning. All other objections can be raised for the first time at the trial.

Mr. Everett: Well, I understand that is the practice.

Mr. McCabe: Will you please read the question.

(Last question read as follows):

“Q. Now, when you outlined or stated to them, as you testified, the terms of the deal that you would go into with them, did you mention in describing the expenses, or did you describe the types of expenses that you would be willing for the company to pay their share of?”

Just answer “yes” or “no.”

A. I did.

Q. Now, what did you say?

A. I told them I would be willing to share the expense of drilling wells, putting them into production on the lease, but not a lot of outside ex-

(Deposition of T. P. Jones.)

penses all the way around the country, which Mr. Hurley said probably it wouldn't amount to much; probably ten per cent or less, maybe.

Q. And then what did you say?

A. I said, "All right, let's do this: I will give you five per cent of ours, making yours fifty-five per cent, and you pay all of the expenses outside the lease."

Q. Let me see if I understand you correctly. Did you say that your people would take forty-five per cent and you would give the company fifty-five per cent?

A. Yes, which would make it ten per cent to pay the outside expenses. Mr. Gee said he could write up a contract [447] covering that.

Q. Was there anything said at that time pertaining to the corners of the lease?

A. These expenses was to be just what was on the lease; not off the lease.

Mr. Everett: We object to that question and answer, the question as being leading, and ask that the question and answer both be stricken.

Q. (By Mr. McCabe): Now, after this conversation did Mr. Gee return to you a form of proposed operating agreement to be signed?

A. He did.

Q. And did you read it?

A. I did, and objected to it.

Q. Just a moment. You say you did. When you read it, what did you say to him?

(Deposition of T. P. Jones.)

A. I told him that the objections that I had made and wished to put in the lease wasn't in there. He said, "I will go and rewrite it and include it in there," and he did.

Q. Just a minute. After he said that he would change it and include it into the lease, did he go away, or what did he do?

A. He went away, over to his office, and was gone a while and came back with some copies rewritten, which had——

Q. Just a moment. Copies rewritten—of the proposed form of agreement? A. Yes, sir.

Mr. Everett: Let's let the witness testify. This leading business, I think we understand what it is, and it will certainly simplify it from the standpoint of this [448] witness and from the standpoint of the examination, too.

Q. (By Mr. McCabe): Did you read the last form that he returned to you?

A. I did, and he pointed out to me where it was covered; my objections were covered in it.

Q. What did he say when he pointed out that paragraph?

A. He said that covered the objections that I had; that there would be no charges against the company except what was done on their ground; the way I understood it; as he explained it to me, at least.

Q. At that time was there any agreement similar to the one concerning which you have testified made with the Potlatch Oil and Refining Company?

(Deposition of T. P. Jones.)

A. Yes.

Q. And with reference to the form of that agreement, was that similar to this agreement?

Mr. Donovan: We object to this.

Mr. McCabe: All right. I withdraw it.

Q. When Mr. Gee made this statement concerning this portion that he had included in the proposed form of operating agreement, was Mr. Hurley present? A. Yes, sir.

Q. And after he made that statement, what did you do with reference to the original operating agreement of which Plaintiffs' Exhibit 2 purports to be a copy? A. What did we do?

Q. What did you do?

A. We signed it up.

Q. You signed it, and who else signed it?

A. Mr. Luke signed it and the Ohio men [449] signed it.

Q. And by "the Ohio men," who do you mean?

A. Why, Hurley and Sellery. I don't know whether Gee signed it. I don't think Gee signed it, as I remember.

Q. Were you acquainted with Robert E. Wilson?

A. Yes, sir.

Q. And were you acquainted with him in the year 1922? A. I had been for several years.

Q. Did you ever hear of the Inland Empire Oil & Gas Syndicate? A. I did.

Q. Did you ever sign an instrument designated "Agreement and Declaration of Trust of Inland Empire Oil and Gas Syndicate"? A. I did.

(Deposition of T. P. Jones.)

Q. Did anyone else sign that?

Mr. Everett: We object to the form of the question. Mr. McCabe, if you want to introduce it—First, I think that is the best evidence of it.

Mr. McCabe: I have got to show the execution of the original before I can introduce a certified copy. That is the idea. In other words, that is my foundation question for the introduction of the certified copy.

Q. Did anybody else sign the same instrument?

A. Mr. Wilson and Mr. Gerlough.

Q. Showing you an instrument marked for identification Plaintiffs' Exhibit 1, please examine that instrument.

A. Well, I will frankly say that I cannot read this here. I ain't as good sight as I once was, but I can see the names and so on. If you want me to take the time, I have a glass here that probably I can read it with. I have a stronger one [450] at home. Maybe I can read it.

Q. Well, just look at this Plaintiffs' Exhibit 1.

A. Do you want me to read this over?

Q. Just kind of glance through it. Did I show you before coming up to this hearing this morning, or up to the Court House, an exhibit marked Plaintiffs' Exhibit 1? A. Well, I think you did.

Q. Well, examine it and see whether I did or not.

A. I don't remember whether you did or not. You showed me something. I am not going to read all of this.

(Deposition of T. P. Jones.)

Mr. McCabe: We will dispense with it. We will introduce it in another way.

A. Lots of words I can't make out, but I know the instruments were made.

Q. Well, were you ever connected with the Inland Empire Oil and Gas Syndicate?

A. I was a director in it, or trustee, as you may call it; trustee of the syndicate.

Q. Do you know who else were trustees with you at any time?

A. Jean Gerlough and R. E. Wilson.

Mr. Everett: We object to the form of the question until you bring out the times he was connected with it.

Q. (By Mr. McCabe): What years were you connected with Troy-Sweet Grass Oil and Gas Syndicate; between what years or during what years?

A. Well, 1922 and '23, until it was dissolved. I don't remember what year the company was dissolved, but it sold the holdings to the Potlatch.

Q. During that time, who else, if anyone, were trustees [451] with you of Troy-Sweet Grass Oil Syndicate?

A. There were K. G. Luke, J. A. Harsh and Stapleton. I forget Mr. Stapleton's initials.

Q. And Mr. Stapleton?

A. I don't remember his initials now. I know him well, for years and years; worked with him for a number of years.

Mr. Everett: That is the Troy-Sweet Grass you are talking about? A. Yes.

(Deposition of T. P. Jones.)

Q. (By Mr. McCabe): Did all of those men hold office at the one time or different times?

A. No. Stapleton and Luke, I think, and myself first. Then I don't just remember who else was in at first. They had that organized before I got into it. I came into it after I bought into it, and took command of it. I don't just remember who all the fellows were who was in it at that time.

Q. Were there more than three trustees at the time, or just what is the fact?

A. There was three or five. I think the articles provided for three or five, or three or seven. I wouldn't be sure to remember now. That is a long time ago.

Q. When you were connected with the Troy-Sweet Grass Oil Syndicate, did you have any official title?

A. I was president of it and manager.

Q. President and manager? A. Yes.

Q. Now, during any time during the years 1922 to 1927, were you acquainted with Mr. John McFadyen, who purported to——

A. Yes.

Mr. Everett: Let's not lead. [452]

A. I got acquainted with him.

Q. (By Mr. McCabe): And what other name was he known by?

A. Why, I never heard of any names than John McFadyen or Jack.

Q. Jack McFadyen?

A. Yes. That is all the names I ever heard of him. It was sometime after we got operating in the Kevin field that I got acquainted with him.

(Deposition of T. P. Jones.)

Q. At the time you knew him, was he acting or purporting to act—— A. Yes, sir.

Mr. Everett: You haven't shown any time yet, Mr. McCabe.

Mr. McCabe: Yes. Anytime between 1922 and 1927.

Mr. Everett: He said he didn't become acquainted with him until after they were operating.

A. Well, we started operating in '22, and it may have been '23 or '24 that Jack came up to the field first, and I got acquainted. I wouldn't say what year it was. It was a year or so after we started operating that I got acquainted with Jack. I guess he had been in the field.

Mr. McCabe: Did you know L. J. Yealy?

A. I did.

Q. When did you first get acquainted with him?

A. I couldn't say exactly. Probably the first year he became active in the field.

Q. And about when would you say?

A. I think probably it was '24, maybe late '23, when he first came into the field. I wouldn't swear when he first came in the field; maybe '23 [453] or '24.

Q. After the instrument designated "Operating Agreement," a copy of which has been introduced as Plaintiffs' Exhibit 2, was signed, what, if anything, did the Ohio Oil Company do in connection with the property described in the agreement?

A. Well, they started drilling.

Q. And who took possession of the property?

(Deposition of T. P. Jones.)

A. The Ohio Oil Company.

Q. Did the Troy-Sweet Grass or any of its officers or agents have anything to do with the active operations on the land?

A. Nothing at all. The contract provided the Ohio should do that.

Q. Do you remember when the Ohio drilled the first well under the agreement?

A. I wouldn't describe the land. It was what is known as the Baker lease in three or four of that township, Section 3 or 4 of that township. I wouldn't positively say.

Q. Do you know who took the oil that was produced? A. The Ohio Oil Company.

Q. And did the Ohio drill one or more wells upon the land described in the operation agreement?

A. I think they drilled a number of wells, eight or nine, and maybe have drilled more since. I don't know.

Q. Did they produce any oil or gas or both?

A. They produced oil in the first well, and all of them that they drilled under that particular lease produced oil.

Q. Do you know about the time, the approximate time that they completed the drilling of the well which you say was drilled on the Baker lease?

A. Well, I wouldn't exactly say the date that it was [454] drilled in. It wasn't very long, because I had a standard rig erected on the lease. I sold them the rig. I was going to drill it myself; was

(Deposition of T. P. Jones.)

just ready to drill in when I made a deal with Mr. McFadyen and sold him my rig. He started drilling a few days afterward. I don't know how many days; not very many, but I came over home because I had business over here, and the first thing I heard, the well was in. I wouldn't remember what date.

Q. Let me ask, was it sometime in 1922?

A. Oh, yes; late June or first of July, something like that.

Mr. Donovan: Then I think I must have misunderstood something here.

A. I say, it may have been late June or the first of July that it came in.

Mr. Donovan: I understood you to say that you sold the rig to McFadyen?

A. I sold the rig, not to McFadyen, but to Hurley, I said.

Mr. Donovan: I thought you said McFadyen.

A. No. I sold it to Hurley, right the day I made this agreement with them. I sold them the rig that I was erecting on the lease.

Q. (By Mr. McCabe): A moment ago you used the name McFadyen. Was it McFadyen you sold the rig to, or Mr. Hurley?

A. No. Mr. Hurley. I didn't know McFadyen then. I meant Mr. Hurley. I sold it to him the very day I made the contract, after we had signed it.

Q. After the Ohio Oil Company discovered oil on the Baker lease and continued their operations, as you have [455] testified, did they submit to you

(Deposition of T. P. Jones.)

at any time, or the Troy-Sweet Grass Oil Syndicate, any writing setting forth items of expense which they claimed had been incurred in connection with their operation?

A. They did. They started in right away.

Q. How often were those statements submitted?

A. Supposed to be submitted every month.

Mr. Everett: I object to the form of the question in the absence of any such statement in the record.

A. They were supposed to be submitted every month that oil was sold.

Q. (By Mr. McCabe): On these statements—Did you read the statements?

A. Why, yes, I read them.

Q. At any time did you discuss any of the items appearing on these statements with any person connected with the Ohio Oil Company?

Mr. Everett: Let's have the time and persons, the names of the persons.

Mr. McCabe: In the year 1922.

A. Why, I wouldn't say whether it was Yealy or Hungerford. There was a man named Hungerford that had something to do with the Ohio out there at one time in the operation, and I wouldn't say whether it was Yealy or Hungerford, but anyway, I said they were charging us for stuff they hadn't ought to charge us. Anyway, they said to take it up with the officials of the company.

Q. (By Mr. McCabe): Directing your attention to the year 1925, did you retain, or did Troy-Sweet

(Deposition of T. P. Jones.)

Grass Oil Syndicate retain any attorneys to act for them? [456]

A. Why, when they kept charging us with stuff——

Q. Just say “yes” or “no.” A. Yes, sir.

Q. And what firm of attorneys did they retain?

A. We retained Freeman, Thelen & Frary of Great Falls, Montana.

Q. And in the year of 1925, was there any meeting held in Shelby, Montana, at which were present Mr. Firmin, purporting to act for the Ohio Oil Company, Mr. Jean Gerlough, Mr. J. W. Freeman, Mr. R. E. Wilson and yourself?

A. Yes, we had a meeting there.

Mr. Everett: May it be understood, Mr. McCabe, that my previous objection there as to competency applies to this, as to Mr. Firmin also, who is also deceased?

Mr. McCabe: Yes.

Q. And in a general way, what was discussed, or was there any discussion at that meeting concerning the operation of the Ohio Oil Company under the operating agreement? A. Yes.

Mr. Everett: May I examine the witness a moment on voir dire?

Mr. McCabe: Yes, go ahead.

Q. (By Mr. Everett): Did you make records of your meetings? Did you keep minutes of your meetings?

A. I think we did in our minute books. Well, no. It wasn't a company meeting. It was an official

(Deposition of T. P. Jones.)

meeting with the Ohio and the two different companies.

Q. (By Mr. McCabe): But on this occasion that I refer to——

A. With the attorneys we had employed to defend us, or collect what we had been [457] overcharged.

Q. Possibly I confused you. What I intended to ask you is, were you present in Shelby, Montana, in the year 1925, in company with Mr. Freeman, Mr. J. W. Freeman, Mr. Jean Gerlough and Mr. R. E. Wilson? A. I was.

Q. During that time when you were present with those persons, was there any discussion had between you or the persons present concerning the operations of the Ohio Oil Company under the operating agreement? A. Yes.

Q. And at that meeting, that discussion, what in a general way did that discussion refer to?

A. Overcharges that the Ohio had made against us.

Mr. Everett: We object to this line of questioning for the reason previously stated, and the further objection that in the answer to my question he stated that they kept minutes of their meetings, so I make this further objection, that if there was any official action taken, the best evidence is the minutes of the corporation.

Q. (By Mr. McCabe): Was this a meeting of the company, or just individuals?

A. No, just a meeting of the directors of the

(Deposition of T. P. Jones.)

various companies and the Ohio representative and our attorney to try to clear up or clarify the thing.

Q. At that meeting did Mr. Firmin make any request to the persons present relative to the operations or concerning the operations of the Ohio?

A. Yes, he did.

Q. What did he say?

A. Why, he requested a written statement of our [458] objections and so on, and if I remember right, we sent it to him.

Q. Now, just a minute. After he made this request, did you give Mr. J. W. Freeman any instructions concerning these operations?

A. Yes. Mr. Freeman was our attorney, and we gave him instructions to furnish what he requested.

Q. What did you ask Mr. Freeman, as one of your attorneys, to do?

Mr. Everett: Which Mr. Freeman is that?

Mr. McCabe: Mr. J. W. Freeman.

Q. What did you ask him to do, you or Mr. Gerlough, or Mr. Wilson, or any of you?

A. Well, we directed him to collect this money, if I remember right; the overcharge.

Q. Were there any directions given him with reference to writing Mr. Firmin this letter that was requested?

A. Oh, yes; we told him to write him.

Mr. Everett: I object to that as leading.

A. To give him what he asked for and to collect the money for us.

Q. (By Mr. McCabe): After that meeting did

(Deposition of T. P. Jones.)

Mr. Freeman make any statement to you and the persons that were present at that meeting, other than Mr. Firmin, concerning whether he had written a letter? A. He did.

Mr. Donovan: I object to that as hearsay.

Mr. Everett: I want to make the further objection, too, that Mr. Firmin is dead and we would have no opportunity to cross-examine him, and that is one of the things that the [459] parole evidence rule is supposed to protect against, and I think that again, anything as to conversations and so on with Freeman is objected to.

Mr. McCabe: I will tell you, frankly, we intend to bring all of this within the exceptions to that rule that you stated.

Q. Now, Mr. Jones, after the meeting, did you ever receive a letter purporting to be a copy of the letter which Mr. Freeman said he had written to Mr. Firmin?

A. Yes, sir. It was put in our records. It was put in our files.

Q. Showing you this letter marked Plaintiffs' Exhibit 26 for identification——

A. Yes, that is some correspondence we had received from Mr. Freeman.

Q. Are you able to identify that letter? Do you recognize it? A. I do.

Q. Did you show this letter to Mr. Gerlough or Mr. Wilson, or both of them, after you received it?

Mr. Everett: I object to the question as being leading.

(Deposition of T. P. Jones.)

Mr. McCabe: Strike it.

Q. Did you show this Plaintiffs' Exhibit 26 to anyone else, any other person, after you received it?

A. Why, yes, sir; I showed it to——

Q. Who did you show it to?

A. I showed it to Mr. Gerlough and Mr. Wilson, and I think Mr. Harsh, and probably Mr. Hornby. I don't know who all; probably the directors of the various companies.

Mr. McCabe: I now offer Plaintiffs' [460] Exhibit 26.

A. I was trying to think of another man's name as director of the Inland of Seattle. I can't speak his name right now. I knew him well, too. Mr. Ball, I think.

(Whereupon, copy of a letter marked Plaintiffs' Exhibit No. 26 was received in evidence and is hereto attached and made a part hereof.)

Q. (By Mr. McCabe): Did you ~~you~~ receive a letter from Mr. J. W. Freeman of the firm of Freeman, Thelen & Frary, purporting to be a copy of a letter from the Ohio Oil Company in response to the original of Plaintiffs' Exhibit 26? A. Yes.

Mr. Donovan: That is objected to as leading, and it also calls for hearsay.

Mr. McCabe: Just answer the question.

A. I did, yes.

Q. Showing you Plaintiffs' proposed exhibit marked "Plfs. Ex. 27," I will ask you to state whether you recognize that exhibit or able to identify it? Just answer "yes" or "no."

(Deposition of T. P. Jones.)

A. The question was, did I receive this?

Q. Yes. Do you recognize it, or can you tell what it is? A. Why, it is a letter that——

Q. Just say “yes” or “no.” A. Yes.

Q. Just state what that exhibit is as to being a copy, or otherwise, of the letter which Mr. Freeman notified you he had received from Mr. Firmin.

Mr. Donovan: I object to this as hearsay, also leading, and the witness stating whether he has any personal knowledge of it whatsoever. [461]

Q. (By Mr. McCabe): Do you know what the question is? Just read the question.

(Last question read.)

A. I remember having received a copy of this, or a copy just like it.

Q. Did you receive this from Freeman, Thelen & Frary?

Mr. Donovan: Objected to as leading.

Q. (By Mr. McCabe): Who did you receive it from? A. Mr. Freeman.

Q. By “Mr. Freeman,” what Mr. Freeman?

A. Well, J. W. Freeman. Judge Freeman, we used to call him.

Mr. Everett: We understand we have our objections, all objections we might have?

Mr. McCabe: Yes.

Q. In the year of 1926, were you present at a stockholders’ meeting of the stockholders of Potlatch Oil and Refining Company? A. Yes.

(Deposition of T. P. Jones.)

Q. What time of the year was that held, the first or last, or what part of the year, do you recall?

A. Well, we used to postpone the meeting, you know; call a meeting at the regular time and then postpone it. I don't just remember positively what date the meeting was held.

Q. Well, at this meeting Mr. Freeman and an attorney, or a man purporting to be an attorney, from Tacoma, spoke to the stockholders?

A. Yes, sir.

Mr. Everett: We object to the question as leading.

Mr. McCabe: That is merely to identify the meeting.

A. Yes, they talked to the stockholders. [462]

Q. (By Mr. McCabe): And after that meeting did you see Mr. John McFadyen?

A. Yes, several times.

Q. And did you have any conversation with him pertaining to the operating agreement between the Ohio Oil Company and the Troy-Sweet Grass Oil Syndicate?

A. Yes, sir.

Mr. Everett: We object to the question as being leading.

Mr. McCabe: At the time and place—Where was it you saw him?

A. At Shelby, Montana.

Q. And where and what place in Shelby, Montana, do you remember?

A. Why, I think it was right across from the hotel there, the oil station. I saw him and I went over and talked with him.

(Deposition of T. P. Jones.)

Q. And what hotel was that?

A. That Rainbow Hotel. There was a filling station just across the street there, and I seen John and I went over and talked to him.

Q. Who was present at that time?

A. When I was talking to Mr. McFadyen?

Q. Yes.

A. Myself and John McFadyen.

Q. And was there any other person present?

A. No, because he was just going to leave the country, and I wanted to talk to him before he left.

Q. What did you say to him at that time in connection with this operation?

A. I told him if he didn't correct these things and make [463] an accounting, we would have to enter a suit against the Ohio Oil Company.

Q. And what did he say?

A. He told me—He said, "Don't start no suit, because the Ohio Oil Company is responsible and reliable, and eventually in the final account we will fix this thing up and pay you anything that was overcharged against you. You can rest assured of that. The Ohio Oil Company is responsible and reliable." He said, "I will use my efforts to see that it is brought to a head without a suit."

Q. As a result of Mr. Fadyen's statement to you, what if anything did you do with respect to starting a suit? A. I didn't start any at all.

Q. What is that?

A. I didn't pretend to start any. I told my

(Deposition of T. P. Jones.)

directors just what he said, and I said, "We will wait and see."

Q. After you had this conversation, did you notify any person connected with either the Troy-Sweet Oil Syndicate or the Potlatch Oil Company, or both of them, concerning this conversation you had with Mr. McFadyen?

A. I did. I talked, I think, with Mr. Gerlough and Mr. Wilson and Mr. Harsh, and I think to Mr. Ball and Mr. Laird. I don't know how many I talked to about it.

Q. Who are you positive that you did talk to?

A. I know I talked to them because they were our directors of my different companies.

Q. Are you positive that you talked to all of them, or just some part of them?

A. I didn't see them all together, but I talked to Mr. Harsh, over there and over here. We were in the bank [464] together, and I was with Mr. Laird here, and the others were over there, except Mr. Ball, and he was in Tacoma.

Q. In the years 1922 and subsequent years, did you hold any position with any other company? Were you working for any other company besides Troy-Sweet Grass and Potlatch?

A. Yes, I was, all the time working for other companies, too.

Q. Who were you working for besides those companies? A. Potlatch Lumber Company.

Q. As a result of this other work that you did, did it take you away from Shelby, Montana?

(Deposition of T. P. Jones.)

A. Oh, yes. I was only there part of the time. I left a secretary there always.

Q. And what was your practice in regard to spending time in Shelby in connection with the affairs of the Troy-Sweet Grass Oil Syndicate and Potlatch Oil and Refining Company?

A. I was there a good part of the time; after '23 more than before that. Sometimes I was east; sometimes I was one place and sometimes another, but I tried to take care of the business affairs the best I could.

Q. Did you go back and forth between Shelby, Montana, and the other places you worked during that time?

A. Yes, all the time going back and forth.

Q. Did you ever sever your connections with the Potlatch Oil and Refining Company and Troy-Sweet Grass Oil Syndicate as trustee or officer?

A. I did, in '32.

Q. About 1932?

A. The spring of '32, yes, sir. I wasn't around Shelby much, a great deal, so I severed my [465] relations.

Q. Showing you Plaintiffs' Exhibit 28 for identification, I will ask you if you ever received that from any source? A. Yes, sir.

Q. You received that? A. Yes, sir.

Q. In the United States mail?

A. Yes, sir.

Mr. McCabe: We now offer in evidence Plaintiffs' purported Exhibit 28.

(Deposition of T. P. Jones.)

(Whereupon, a letter marked Plaintiffs' Exhibit No. 28 for identification was received in evidence and is hereto attached and made a part hereof.)

Q. (By Mr. McCabe): Now, have you read that exhibit?

A. Yes, sir, I have read that time and time again.

Q. Do you recall the letter referred to in that exhibit to which the exhibit purports to be an answer?

A. Do I do what?

Q. Do you recall, or have you any recollection concerning the letter to which this was the answer?

A. I have, yes. I have some recollection.

Q. Showing you Plaintiffs' Exhibit 29, please read and state whether you can identify that carbon copy of a writing?

A. Yes, that is a letter I sent them.

Q. Who wrote that letter, the original of which this purports to be a carbon copy?

A. I think I wrote it myself, personally.

Q. That is your recollection?

A. Yes, sir.

Q. And did you mail that in the United States mail? [466]

A. Yes, sir. I think I wrote it personally myself. The secretary was over here.

Mr. McCabe: I now offer in evidence Plaintiffs' Exhibit No. 29.

(Whereupon, a letter marked Plaintiffs' Exhibit No. 29 for identification was received in evidence and is hereto attached and made a part hereof.)

(Deposition of T. P. Jones.)

Q. (By Mr. McCabe): Did you have correspondence or write letters to the Ohio Oil Company or receive letters from the Ohio Oil Company while you were connected with Troy-Sweet Grass Oil Syndicate or Potlatch Oil and Refining Company?

A. Did I have letters?

Q. Did you receive letters? A. Yes, sir.

Q. Did you write letters to those people?

A. Yes, sir.

Q. And after you severed your connection with the Troy-Sweet Grass Oil Syndicate and Potlatch Oil and Refining Company, what did you do with those letters and copies of letters?

A. I left them in the file over in the Potlatch Oil and Refining Company?

Q. Where? A. At Shelby, Montana.

Q. Do you have any letters in your possession or copies of letters written to you by the Ohio, or written on behalf of the Troy-Sweet Grass Oil Syndicate or Potlatch Oil Company to the Ohio Oil Company?

A. I left all letters and copies of letters in the files over in Shelby, Montana. I took none [467] away.

Q. As far as you know, they are still there?

A. As far as I know, they are still there. I haven't examined them or been there for sometime.

Q. In your testimony this morning you mentioned Mr. Gee bringing back to you on June 15, 1922, a proposed form of operating agreement in which the interests specified were fifty-five per cent

(Deposition of T. P. Jones.)

interest to the Ohio Oil Company and forty-five per cent interest to the Troy-Sweet Grass Oil Syndicate, which you didn't sign. Do you recall that testimony? A. Yes, sir.

Q. Did Mr. Gee leave that form with you or a copy of it at that time.

A. No, he took them back.

Q. What did he do with it?

A. I don't know. He took them right back to his room where he wrote them and rewrote copies and brought them back and including the clause that I wanted in it, as I understood.

Q. Did you ever hear of Potlatch Oil and Refining Company? A. Yes, sir.

Q. Were you ever connected with that company?

A. Yes, sir.

Q. What was your connection?

A. I was a director and president of it.

Q. During what years?

A. From the day it was created until 1932.

Q. And do you remember about the year it was created or organized?

A. The spring of '22, March or sometime in the spring of [468] '22, '21 or '22. It might have been late '21, but I think it was the spring of '22.

Q. In other words, were you connected with it from its inception as a corporation?

A. Yes, sir. I was the instigator of it. I was the instigator of it.

Q. Did you have any other capacity, manage-

(Deposition of T. P. Jones.)

rial capacity with the Potlatch Oil and Refining Company?

A. I was manager—president and manager.

Q. And a director? A. And a director.

Mr. McCabe: That is all, Mr. Jones.

Cross-Examination

By Mr. Everett:

Q. What stock do you own in the Potlatch Oil and Refining Company?

A. I own 1400 shares right now.

Q. How many shares of stock are there outstanding?

A. There is 1463 or 1465 thousand.

Q. How many shares did you initially own?

A. I think about 150.

Q. And what was the authorized capital stock at that time?

A. Two thousand shares, or two million shares.

Q. How much of that was outstanding?

A. Well, this 1400 and some—1460; I wouldn't say whether it was 1463 or close to 1465.

Q. That was in 1922?

A. '23 was the last that was issued, I believe, or '24. [469]

Q. In '24 was the last stock that was issued?

A. '23 or '24 was the last stock that was issued.

Q. And how much stock was issued to you during the years 1922, '23 and '24?

A. Well, whatever I had. It was one hundred forty and some odd thousand all together.

(Deposition of T. P. Jones.)

Q. One hundred forty and some odd thousand?

A. I think it was 140,000; between 140,000 and 150,000.

Q. And at the time the 140,000 or 150,000 was issued, how much—what was the total outstanding stock at the time you held 140,000 or 150,000 shares?

A. Well, it was 1465 thousand, I think; 1465 thousand, if I remember correct. I don't remember the exact thousand.

Q. Put it this way: What percentage of the authorized and outstanding stock did you hold at the time you were president and manager of the company?

A. Well, I told you—a hundred and forty some odd thousand.

Q. Out of the total amount issued?

A. Out of the total amount issued.

Q. Well, what was the total amount issued?

A. Fourteen hundred sixty-five thousand shares, and I had 140 something of it.

Q. You had 140-some thousand? So that that would leave how much stock outstanding, issued and outstanding to others, that you didn't own?

A. The balance of 1465 thousand with mine subtracted.

Q. That would be 140,000 from 1465 thousand?

A. Yes.

Q. You held, then, in percentage about ten per cent of [470] the stock?

A. If that figures ten per cent, that is what I held.

(Deposition of T. P. Jones.)

Q. I don't know. I don't get your 1465 thousand.

A. There was 1465 thousand shares of stock out, and I owned 140 some odd thousand shares.

Q. When you say 1465 thousand, you mean 1,465,000? A. Yes, sir.

Q. And how much of that outstanding stock did your wife own?

A. I think she—I couldn't tell you exactly, because she bought some stock one time and paid two dollars a share for it when she hadn't ought to. She bought some other people's stock.

Q. Well, what was the stock that you gave her? How much did you give her of this 1,465,000?

A. I never gave her any except what she paid for.

Q. And how much stock did she hold? You don't recall?

A. Yes. I don't recall exactly what she has now. She did have—she don't tell me all she has got. She has got a lot of stuff she don't tell me about. I know she bought some and paid two dollars a share for that I objected to when I found out, but she has probably over 100,000 shares now.

Q. She has 100,000 shares now? A. Yes.

Q. And what is the outstanding stock now?

A. The same as it was.

Q. One million, four hundred sixty-five thousand?

A. I haven't been in the company for quite a

(Deposition of T. P. Jones.)

while. I don't know. I don't know what they would issue any for. I issued all of the stock that was supposed to be issued. [471]

Q. Have you received any stock dividends recently? A. Not for a year.

Q. I am speaking of stock dividends.

A. Oh, no. We only received stock dividends once.

Q. What was the once you received stock dividends?

A. Let me see. I think it was 1924.

Q. Well, do you recall what that dividend was, how much stock you received as a dividend?

A. Well, I will tell you frankly. I will be truthful and tell you. I declared a stock dividend twelve and one-half to one that was outstanding. That is how this stock came out.

Q. Twelve and one-half to one?

A. Yes, sir.

Q. And what about cash dividends?

A. Well, I think there is seven or eight dividends has been paid. I ain't sure what it is. Since I quit the company, my stock wasn't so much that I didn't pay much attention to it, but I think they have declared seven or eight dividends; ten, something like that.

Q. Since 1932.

A. Since it was organized.

Q. Well, did you have any cash dividends during the time that you were president of the Potlatch?

(Deposition of T. P. Jones.)

A. Yes, two or three or four. I don't remember which it was.

Q. You were receiving a salary at that time from the Potlatch?

A. Yes. I was receiving a salary, when I was president of that. [472]

Q. When you were president, what was the source of income of the Potlatch Company?

A. Well, it had money from the Ohio, and I think I drilled fifteen wells out there in the field. I think I had ten little wells; fifteen for the Potlatch; ten or twelve. I don't remember now just how many.

Q. Most of your income was from what source?

A. Most of it was from the Baker lease; the biggest part of it for a few years there, and then they dropped off.

Q. That is when the production dropped?

A. As the production went down, they dropped down, of course.

Q. Do you still have your interest in the Inland Empire?

A. No. I have got fifty shares. I sold the rest of it.

Q. You still have fifty shares of Inland Empire?

A. I have fifty shares of Inland Empire; fifty dollars invested in the Inland Empire, and I didn't know that or I would have sold that, too.

Q. When did you dispose of your interest in the Inland Empire?

(Deposition of T. P. Jones.)

A. Oh, it was '31—'30 and '31, I think most of it; a little of it in '32, the spring of '32. I wanted money in other business and I sold it.

Q. Did you receive each month from the Ohio Oil Company during the time you were president a statement of account? A. Yes, sir.

Q. And if there was any credit balance due the Potlatch Oil and Refining Company on those accounts, did you receive the checks to cover [473] that? A. Yes.

Q. You endorsed those checks——

A. The Potlatch received it.

Q. And what about the Inland Empire?

A. Well, they received theirs, too.

Q. During that time, from your Inland Empire interests, did you have any income from that interest?

A. I had a little. I don't just remember what it was, because I was selling off Inland Empire stock. I sold the most of it. I just kept enough so I could be a director until '32, then I disposed of that.

Q. But The Ohio Oil Company did send you a monthly statement?

A. They sent the Inland Empire and the Potlatch.

Q. Sent them both a monthly statement?

A. Yes, sir.

Q. And the Troy-Sweet Grass prior to the time——

A. It was dissolved.

Q. Prior to the time it was dissolved?

(Deposition of T. P. Jones.)

A. Yes, sir.

Q. When those statements and checks were received, did you cash the checks?

A. I think I did two or three times. Most of the time they were put right into the bank to the credit of the Potlatch.

Q. Well, the checks were deposited for the credit of the Potlatch Oil and Refining Company?

A. Yes.

Q. What about the Inland Empire?

A. The same way. I wasn't running the Inland Empire. [474] I was a director, but I wasn't running that. Mr. Gerlough was a director, Mr. Wilson, and then Mr. Gerlough, but I got my statement from him.

Q. Potlatch retained the monies in its account that it received from the Ohio?

A. Yes, sir.

Q. Were you a director or trustee or beneficial interest owner in the Troy-Sweet Grass Oil Syndicate in September of 1922?

A. Yes.

Q. Did you receive a statement from the Ohio Oil Company—did the Troy-Sweet Grass receive a statement from the Ohio covering the Month of September, 1922?

A. I suppose they received one every month. They were supposed to receive one every month. I can't remember what the book says now, but they were supposed to get one. I believe there was one or two months we didn't receive it and we wrote them about it, or something like that.

(Deposition of T. P. Jones.)

Q. I have a copy of the Ohio Oil Company statement of September 30, 1922, being Bill No. 2092, addressed to the Troy-Sweet Grass Oil Syndicate. In that I note the items as follows, the following items: Cost of wells, \$1,098.92; gas expense, \$36.73, or a total of \$1,135.65; ten per cent of above, over-head expense, \$113.56; net cash advanced during September, 1922, \$1,249.21; net cash advanced to September 1, 1922, \$189.93; net cash advanced October 1, 1922, \$1,439.14; interest on net cash advanced to September 1, 1922, \$189.93, for one month at eight per cent, \$1.26; showing a net cash advance and interest chargeable to the account of the Troy-Sweet Grass Oil Syndicate in the total amount of \$1,440.40. [475] Did you object to any of the items listed in that account at that time?

A. Well, I can't remember what objections I made at that time. That was in '22?

Q. 1922.

A. What well was that, and what well were they drilling? There were two or three pieces of ground they were drilling wells on and they sent accounts for it, and on some we owed them \$38,000 to \$40,000.

Q. Your testimony is, you can't remember whether you objected or whether you didn't?

A. I don't suppose I did. If you identify the record of it. What well is that you are talking about that they drilled?

Q. Well, I am asking the questions here. I am not testifying. Well, for example, here is a state-

(Deposition of T. P. Jones.)

ment of January 21, 1923, addressed to the Troy-Sweet Grass Oil Syndicate at Shelby, Montana, Bill No. W-2369—

A. What lease is that on?

Q. On the Irving H. Baker, well 1, the Irving H. Baker Well 3, and the water well one, I believe it is, and this totals—I can give you the details if you want it.

A. No, I don't want it.

Q. The total is, cost of wells, \$3,826.55; cost of service equipment, \$1,086.22; oil expense, \$31.66; gas expense, \$47.89; making a total of \$4,992.32; plus ten per cent of that amount, \$499.23; with a credit of \$661.50 for miscellaneous earnings; net cash advances during January 1923, \$4,830.05; net cash advanced to January 1, 1923, \$5,511.28; net cash advanced to February 1, 1923, \$10,341.33; interest on [476] net cash advanced to December 1, 1922, \$45.58; interest on net cash advanced to January 1, 1923, \$5,511.28, for one month at eight per cent, \$36.74; making the net cash advances and interest and showing a debit balance in the amount of \$10,423.65. Did you object to that statement?

A. I objected several times to the——

Q. Well, to this particular statement?

A. Well, I don't know that particular statement or not, but I did several times to the different statements as they came in. I objected to the account to the men out in the field there, and they

(Deposition of T. P. Jones.)

told me to take it up with the company, which I did.

Q. Have you introduced in evidence all of the communications that you have had from the company complaining about these various items?

A. I couldn't say. I just don't know.

Mr. McCabe: I have introduced some of the communications that have been delivered to me, but whether they were all that were made to the company, I couldn't say.

Q. (By Mr. Everett): Let me ask the witness if he recalls, were there any more letters or communications that you addressed to the company, other than those that Mr. McCabe showed you this morning?

A. The records are all over there. If there were they must have them.

Q. Were there any more than were exhibited to you this morning?

A. Well, I don't know. There may have been. It is a long time since '32, when I turned the files over. There may be some more. [477]

Q. Let me say this was in 1923 I was just reading about, and you don't remember whether you made any complaints about these items or not, to the headings in there?

A. I don't remember that particular month, but I made several complaints to the officials of the company. I don't know about that particular month.

Q. Well, is there any particular month that you would remember?

(Deposition of T. P. Jones.)

A. No, there wouldn't be any particular month that I would, because I was complaining to the bookkeepers and different ones pretty near eternally, but they said there was no use complaining to them; I could take it up with the company, which we did, or had our attorneys do it. I don't know whether it was Yealy or Hungerford.

Q. Well, on that one balance here to Sweet Grass of \$10,000—on that statement of January 21, 1923, it showed a debit balance to the Ohio Oil Company of \$10,423.65. Were you called upon to pay that in cash?

A. No. We weren't to pay nothing in cash. They were to take it out of production, interest and all.

Q. Well, they did take it out of production?

A. Well, I think they did.

Q. You subsequently received some checks?

A. Yes, sir.

Q. But you received no check if there was a debit balance?

A. No. We received no check when there was a debit balance. I think Mr. Findley, the auditor in Great Falls, several times talked about the items that was overcharged and tried to arrange, and I so notified the company of the charges [478] all the time.

Q. Did the company, as to incorrect charges—did they ever during the time you were president make any adjustment? A. No, sir.

Q. What about this letter that you had here?

(Deposition of T. P. Jones.)

Did you receive a letter from Mr. Billstone when you called his attention to the fact that a check did not accompany the statement?

A. His letter explained that. The check came along but they charged that much work up illegally, too, and kept it.

Q. That was your contention?

A. Yes, sir, that was my contention.

Q. And in answer to your contention, what did they state—that the charge was legal, or what was their position?

A. Well, they explained why the check didn't come, and they said it was \$9,000 and something chargeable to us for the water system, which I didn't figure was supposed to be included.

Q. Are you familiar with operations out there in the field?

A. I was familiar up to that time, '32.

Q. Well, did they need water to produce the Baker lease?

A. Most assuredly they did need water and had to have it.

Q. Then why was it you contended the charge wasn't proper?

A. Because it was outside, and I gave them five per cent of that to pay for those things, their five and my five.

Q. That is a difference of opinion.

A. That is a difference of opinion now. It wasn't a difference of opinion when we made the contract. [479].

(Deposition of T. P. Jones.)

Q. Then, what was this charge in September, 1923, where they charged you for those things?

A. That is what I wanted to find out why they charged us. I am trying to find out. I ain't trying to find out now so much as the fellows that own it, but I would like to have them find out why they did charge the stockholders.

Q. The charges were made. This \$10,000?

A. There were a lot of them made.

Q. The \$10,000 debit, that was paid by Sweet Grass, was it?

A. No. The Ohio paid themselves. They took it out of production.

Q. Did they give Sweet Grass the balance when there were no debits? A. Yes.

Q. And the statements, they were sufficiently itemized so that you knew exactly what items were being charged?

A. Yes. I knew what items were being charged.

Q. And it was your contention that some of those items were not properly chargeable?

A. Absolutely.

Q. And it was their position that the items were properly chargeable?

A. They had it in their own hands. They charged them, anyhow. They were operating the lease.

Q. You testified you knew Mr. Yealy?

A. Yes, I knew Mr. Yealy.

Q. Did he do any work on the Baker lease?

A. Why, he was field manager. He did it on all of them.

(Deposition of T. P. Jones.)

Q. I mean, did he work on the Baker lease as well as [480] well as some of the others?

A. I suppose some of his time, apparently, was charged against it. I don't suppose he did any real work on the lease, no.

Q. He supervised all of the operation, did he?

A. He supervised the whole field.

Q. Well, would the field operate without supervision?

A. I don't suppose it would. I wouldn't think that it would.

Q. Did you object to the charge for part of his time? A. Absolutely, I did.

Q. Even though you knew that supervision was necessary in the field?

A. Absolutely, because I gave them five per cent of production to help pay for supervision and accounting and everything else. I voluntarily gave them five per cent of production to help pay for those things.

Q. A share of his labor was billed to you, though, in 1923, and at all times since?

A. Yes, as far as I know.

Q. And he supervised the Baker lease as well as the others?

A. I suppose he did. He was supervising the field. That is what he was supposed to have come there for, as I understood it.

Q. Were the expenses of operation supposed to be paid by Potlatch or Troy Sweet Grass or Inland Empire?

(Deposition of T. P. Jones.)

A. Expenses on the lease were supposed to be paid, for the drilling of wells and putting them into production, but that is as far as the expenses were supposed to be paid by [481] the Potlatch and the Troy-Sweet Grass, drilling the wells and putting them into production. That was my interpretation of it. That is what I understood it was, what the contract called for.

Q. Was it your contention that Potlatch was to pay no part of the cost of operation after the well was drilled and put in production?

A. Well, no. It was my contention that they wasn't to pay after the wells was drilled and put into production.

Q. The Ohio was to pay the expenses, pay everything?

A. Yes, pay everything.

Q. Without any part of the charge being made against Potlatch?

A. Not after they were producing.

Q. That would include all costs of operation?

A. Yes, sir.

Q. No part of the cost of operation, pumping the well, would be paid by Potlatch or Inland Empire?

A. Nothing off of the lease.

Q. No, I mean no part of the cost of operating the well would be paid by Potlatch after the well was once drilled and put on production? Is that what we are to understand?

A. They were to operate the lease. We were to pay for drilling the wells or getting them to producing. We were to pay—then they were to operate

(Deposition of T. P. Jones.)

the wells and give us our forty-five per cent, and they were to charge us nothing after that.

Q. Charge you nothing after that?

A. No.

Mr. Everett: Let me see that contract a minute. [482]

(Exhibit 2 handed to counsel.)

Q. The contract about which you testified earlier, Mr. Jones, reading from Paragraph 3 of Plaintiffs' Exhibit 2, provides, and referring to The Ohio Oil Company as party of the second part: "It will pay all costs and expenses of developing and operating said lands for oil and gas purposes, as herein provided, and shall charge the said party of the first part forty-five per cent thereof." A. Yes.

Q. Now, am I to understand from your testimony that that doesn't mean what it says? What does that mean to you?

A. My interpretation of the lease was that they should drill the wells and put them in production and we would pay our forty-five per cent of it.

Q. And from there on you pay nothing?

A. No, no.

Q. Well, you were to pay your cost of operation, then?

A. Well, that wasn't the way I understood it. They were to——

Q. How did you understand it?

A. I understood they would drill the wells and charge us after the first well was drilled, the free

(Deposition of T. P. Jones.)

well, no cost to us at all. Then they would drill the wells and equip them and we would pay our forty-five per cent of drilling the wells and equipment, and nothing for supervision or accounting outside of that, and then after they were drilled they could pump them and take the oil and pay us forty-five per cent of the oil.

Q. What about the cost of operation?

A. Operation would not be much after the [483] well drilled and operating. That was up to them.

Q. And no part of that was to be charged to the Potlatch?

A. Except for the maintenance of the equipment and so on. No labor was to be charged to the Potlatch.

Q. No labor was to be charged to the Potlatch?

A. No.

Q. You testified you were engaged in other businesses. Isn't labor a cost of operation? Is it your contention that labor is not a cost of operation?

A. Yes, I understand all of that. I do lots of business, but we had an understanding what it was to be. Mr. Gee and Mr. Hurley said that would cover the whole thing. That was the clause I had put in there, and there would be nothing charged to us after the wells were put into operation.

Q. You were not to be charged with the cost of operation? Did you read this contract before you signed it? A. I surely did.

Q. Well, what does "all costs and expenses of developing and operating said lands"—what does

(Deposition of T. P. Jones.)

that mean to you? A. It means what it says.

Q. Were they to make—was it your understanding that any part of the amount charged to you was to be paid in cash—charged to your company; any of the amount, the expenses of developing and operating, charged to Potlatch? Were they to be paid in cash? A. By who?

Q. By Potlatch.

A. No. They were taken out of production, interest and all. [484]

Q. Suppose the charge exceeded the credit, were you to be held beyond that?

A. No, no, no. If they didn't get the production, they were out. We weren't to be held at all.

Q. Well, isn't that what your phrase says here, then: "But in no case shall said party of the first part be finally held or charged beyond its share or interest in the production and equipment from, in, or upon said lands"? A. Read that again.

Q. Let's go back. Isn't that what your phrase: "But in no case shall said party of the first part" (referring to the Troy-Sweet Grass) "be finally held or charged beyond its share or interest in the production and equipment from, in, or upon said lands"? Isn't that what that means?

A. I don't gather what you are driving at. It means just what it says there.

Q. Well, it is payable out of oil? Isn't that what it means? The amount that was charged to you was payable out of oil produced? A. Absolutely.

Q. And that is what you mean by your contract?

(Deposition of T. P. Jones.)

A. Yes, sir, that they are to take their pay out of any oil they find.

Q. So if there was more due than there was oil to pay, the Ohio got nothing?

A. The Ohio got nothing.

Q. And that is what that phrase meant, that they didn't get paid unless the oil was there; unless they had production?

A. That phrase meant that they should charge against that lease nothing only what was on the lease. [485]

Q. That was your contention?

A. Yes, that is the way we understood it right there that day, and that was drilling the well and the equipment that went into that.

Q. You objected also to the interest charges, did you, on the monies advanced?

A. I objected to the interest charges so long as there shouldn't have been any charge to us. They had us charged with a lot of stuff that didn't belong to us and charged us interest on it. I objected to that, of course.

Q. Did you object to any other interest charges?

A. No, not where we legally owned them.

Q. Well, there is a \$10,000 balance they charged you interest on?

A. They charged us interest. Maybe that balance shouldn't have been so big, though. That is what I am contending; that balance shouldn't have been that big, maybe, if they had us charged with a lot of stuff that didn't belong to us.

Q. That was your contention?

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A. Yes, that was my contention.

Q. Did the Ohio, insofar as the balance of the contract, except for the accounting phases of it, comply with all of the provisions?

A. Why, yes and no.

Q. Well, explain your answer.

A. Well, Mr. Hurley impressed upon me that they could drill wells cheaper than anyone else because they had lots of tools in the field and there would only be a charge of reasonable rent for tools in the field against that lease; there [486] would be no tools charged, only rental; and they could drill wells cheaper than I could. I could drill some of them wells for \$10,000 myself; most of them.

Q. Well, there was still a matter of the amount of the charge. So far as complying with the contract, if they were obligated to drill a well, they drilled it?

A. Oh, yes. I had no kick on the accounting of the amount of wells they had drilled on the lease. I hadn't when I left there. I didn't care—when they drilled out there and got water, well, I didn't care about them going on the other side and drilling another water well.

Q. The only complaint you had was the matter of the accounting, the charges? A. Yes, sir.

Q. Otherwise, they complied with their contract? A. On drilling wells, they did.

Q. How was your relationship with the company during that time? A. What?

Q. What were your relationships with the company during the years 1922 to 1932? Were they

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generally pleasant?

A. The Ohio Company?

Q. Yes.

A. Why, the men in the field were gentlemen. They were all right. The men in the field were gentlemen. I don't think they were responsible for overcharging me. They said they had to go to the head of the company.

Q. But Mr. McFadyen—

A. Mr. McFadyen told me he would straighten it up.

Q. Well, he said he would straighten it up. Let me ask [487] you this: Did he tell you that the company would do what they were legally bound to do?

A. Yes. He said anything—that the company was reliable and responsible and he was positive that the thing would be settled up without any lawsuit, and we would get our money that was coming to us.

Q. Well, how much? Your understanding, then, was that the company would do what it was legally bound to do by its contract? Is that the impression you received?

A. My impression was that if they could come around and see that the way I did, they would pay it.

Q. If they could come around and see it that way?

A. Yes, sir; they would pay it, and that was the way I seen it. That is the way I interpreted the meaning, and the way I told him it would have to be

(Deposition of T. P. Jones.)

interpreted. He thought they would get around to it after a while.

Q. Was it before or after you talked to him that you had the discussion with Mr. Firmin?

A. That was before, I think. We talked to—I talked to Mr. McFadyen—or saw him three times about it.

Q. When was that?

A. But the last time I talked to him about it was '27 or '28.

Q. Why didn't you bring the suit that was contemplated against the company?

A. Mr. McFadyen asked me not to, and Mr. McFadyen appeared to be a gentleman. He asked me not to. He said, "We will get this straightened up without a lawsuit."

Q. Was it straightened up at the time you left the company in 1932? [488]

A. No, it wasn't straightened up yet.

Q. Did you in 1926 receive any monthly statements from the company? A. '26?

Q. Subsequent to the time of this conversation you were supposed to have had with McFadyen?

A. Oh, yes. We received a statement every month.

Q. Did you receive any money with those statements?

A. Yes, sometimes. We got it quite regularly sometimes.

Q. How much?

A. Oh, I couldn't say. I would have to go back

(Deposition of T. P. Jones.)

and see the records; sometimes \$5,000 or \$6,000, sometimes \$8,000 or \$10,000.

Q. A month?

A. Yes. I wouldn't be sure of the amount. It is between the two companies, you know.

Q. Were the statements that you talked to Mr. Fadyen about any different than the statements before? A. No, not while I was there.

Q. They had the same items in that they had prior to the time that you talked to Mr. Fadyen, did they?

A. Yes, about the same, but there was no building of the camp buildings or a water system or anything like that after the first one.

Q. Well, weren't there charges for camp expense and water system expenses?

A. Yes, and a little credit sometimes from the camps, which didn't amount to nothing, however. They weren't drilling——

Q. The system of charges wasn't changed, was it?

A. They weren't drilling wells at that [489] time.

Q. But the accounting wasn't changed?

A. No.

Q. You still received the same statements covering the same items?

A. Not always the same items.

Q. Well, the same general category?

A. Items that shouldn't be there sometimes, such as maintenance of cars and supervision and

(Deposition of T. P. Jones.)

one thing and another. They were still in there.

Q. In 1932, had the matter been straightened out, as you put it? A. Had it?

Q. Prior to the time you left?

A. No, it had not.

Q. The same charges were still being made?

A. Yes, not so big because the production had dropped down, you know.

Q. I understand that.

A. The work had shut down.

Q. But the suit wasn't filed prior to the time you left in 1932?

A. No, it hadn't been filed when I left.

Q. Would the minutes of the corporation show why the suit wasn't filed?

A. No, they wouldn't show. The minutes of the corporation wouldn't show. The last minutes that we had, I think, was for the lawyers to talk to them, and they left it to us trustees to go ahead and do what we wanted. Then I talked to Mr. McFadyen, and I told the other fellows we would wait a while to see if he couldn't get it straightened out. [490]

Q. What did you tell them about it in 1932 when you left? A. What did I tell them?

Q. About this Ohio account?

A. I didn't tell them anything. The books were there and everything else was there.

Q. So they could do whatever they wanted to?

A. I didn't tell them nothing. It wasn't my

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place to tell somebody else what to do. I was leaving the company and not directing it. It wasn't my place to tell them anything, but later on I did ask them what they were doing and told them that if they didn't do something pretty soon I might sue them for incompetency, the directors.

Q. What consideration did you pay for your interest in the Inland Empire Oil and Gas Syndicate?

A. The Inland Empire? Well, a dollar a share, whatever I had.

Q. What interest did it have in the Baker lease?

A. Twenty-two and a half per cent.

Q. How did it acquire it?

A. Do you want me to tell you how they acquired it?

Q. Yes.

A. Well, the Inland Empire made a deal on some other description of land. I wouldn't know what it was; a contract the same as this. I was instrumental in making it for the Inland Empire, on another half section some place, and they were to drill a free well on that for the Inland Empire, and I think it was three or four days after they got this lease from the Inland Empire that Mr. Hurley came to me and said they didn't want to drill that well. Now, I am telling you [491] this: Mr. Hurley himself came to me. He came to me and said: "We don't want to drill that well." The lease provided they are to start drilling a well there inside of thirty days, and so Mr. Hurley came to me and said he didn't want

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to start that well. He said there were some more leases in the vicinity of it that he wanted to get before they would commence to drill that well, and he says, "I don't want to drill that well." I said, "Well, let's call in Mr. Gerlough and Mr. Wilson and talk it over," and I called them in, and Mr. Wilson and Mr. Gerlough insisted that he start drilling that well, and I said, "Hold on, Bob and Jean, we want to cooperate with the Ohio as far as we can. They have got a lot of our ground and we want them to stay in the field, and we want to cooperate and do what is right with them. Now, listen here, let's do something else about this." Well, they said, "They ought to drill this well. We want it drilled." That was the only lease they owned in the field, and Potlatch had a lot of it. "Now," I said, "Bob, I will tell you what I will do." They were drilling one for us. They had started drilling on this one. "I will tell you what I will do. I am a director in your Inland Company and president of the other company. Now, that piece of ground over there looks as good as this piece of ground. I can't see any difference on the surface of it. One may be just as good as the other. I will tell you what I will do: I will have the Potlatch deed you twenty-two and a half per cent interest in that lease they are drilling on right now, twenty-two and a half per cent of that, and you deed the Potlatch twenty-two and a half per cent in this in your lease over there, and later on he can drill a well on that lease [492] over there."

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They said, "All right, all right." And so Mr. Hurley took our word for it, and he said, "That is all right. We won't drill there." I said, "Will you be satisfied, Mr. Hurley? You can take just as long as you want to drill that well. We will fix this up amongst ourselves and you can drill that well later on when you get the leases that you require around it." So he did. Well, I was called over home by the Potlatch Lumber Company and we didn't fix up the papers between us, the contract between Potlatch and Inland. I was called over home on some business for the Potlatch Lumber Company, and while I was home I got word this Baker well had come in, and I went back over to Montana, and while I was home, before I got back, Bob Wilson and Gerlough had provided two contracts, as we had agreed upon, assigning a twenty-two and a half per cent of this well to the Potlatch, and the Potlatch to assign twenty-two and a half per cent in that to them, and the well was in, and Mr. Luke, I believe, was our secretary at that time, and so when I came in, I said, "I hear we have got a well, Mr. Luke." "Yes," he said, "but," he says, "we are not going to assign a half interest in that well to Mr. Gerlough and Mr. Wilson." I said, "We are, Mr. Luke. We are going to assign a half interest in that to Mr. Gerlough and Mr. Wilson." He said, "Well, maybe the stockholders would object." "Never mind the stockholders," I said; "our word was given and it is going to go, and if you don't want to assign this as the secretary you can con-

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sider yourself fired and I will get another secretary." Of course, I had authority to do it, and he knew that, and he assigned it. That is how they came to get the interest in that Baker lease, and it was legal and it was all right, and [493] they had their interest in it.

Q. Had you formed your Inland Empire Oil and Gas Syndicate prior to that time?

A. Oh, yes, a long time prior to that, and they had drilled a well over in the east side of the field.

Q. When was this that you are talking about? When did that Baker well come in?

A. In '22.

Q. What time in '22? Was it shortly after the Ohio took it over?

A. Shortly after they took it, because, as I said, I had a rig up on it. I don't remember the time, but I had a standard rig, part of the tools at Kevin and part out on the lease.

Q. What was the number on that?

A. Baker No. 1.

Q. When did Baker No. 3 come in?

A. I can't remember right now. They drilled right along. I don't remember the date of any of them coming in, exactly.

Q. Do you remember whether it was a big well or not?

A. I do. It was supposed to be a big well. It was a big well. It was all right. You asked me the question, how the Inland came to be interested, and I told you the best I could.

(Deposition of T. P. Jones.)

Q. You and Mr. Wilson and Mr. Gerlough were the trustees of the Inland? A. Yes, sir.

Q. And who owned the interest in it?

Q. Who owned it? [494]

Q. Yes, who owned the interest in the common law trust—is what it was. Is that right?

A. Yes. Now, you ask me a question I can't answer. The Mr. Ball that created that company—I will tell you this, now: I had went out and acquired a lot of acreage, and Mr. Gerlough had been working for me as a geologist in the Kevin Sunburst and Cutbank fields, that whole country there, and Charlie Emmons and I worked with him a lot. I brought him out of the University of Idaho, took him over there, and I got done with him and I didn't need him any longer. Mr. Wilson was working over here for me in the Potlatch Lumber Company, and he wanted to go over in the oil field and try his hand. He had a little misfortune in his family or something, and I said, "Bob, see if you can raise money to drill a well." He was with the Government then. He had a brother down in the Palouse country, a farmer, who was pretty well fixed. I said, "Do you think you boys could raise enough money to drill a well?" He said, "I don't know," but he went out with me. I said, "You and he take this half section over here on the east side of the field, raise enough money and drill a well." "Well, you come in with us," he said, "and form a company." I said, "All right." We went in and formed a company. They went over and tried to

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raise enough money among their friends, and they couldn't raise it. I put in some money and they put in some. They wanted \$100,000. So the company was formed. I says, "All right, now, I will tell you. I will get you a fellow that will raise your money, the balance of it, \$100,000." So Mr. Ball of Seattle was over here. He was an insurance man. I knew him very well, and he was in my house and I told him [495] about the properties, and I said, "Mr. Ball, raise these fellows some money and put in some yourself," and he said, "All right, I will raise the rest of the money," and he did. He raised the rest of the money, and I don't know who his people were in Tacoma and Seattle that he raised it from. I don't know and I don't care a snap, but I became a director and then he became a director.

Q. A director in the Inland Empire?

A. The Inland Empire. They drilled a dry well, and I said, "All right, now they have got a dry well," but they had the money. "Now," I says, "drill another."

Q. When was the dry hole drilled?

A. Oh, the fall of '21, on the east side of the field. "All right, here is another half section over here. You raise the money. You have got money enough to drill a well on that. We will deed it over to you. You go up and drill on it." Then the Ohio stepped into the game and they were going to drill the well, drill a free well, but Inland had the money to drill the well. They stepped into the game and

(Deposition of T. P. Jones.)

unedrtook to drill this free well, and it came about that I made the deal.

Q. The one you have just told about?

A. Yes, sir.

Q. How many contracts were there entered into on June 15, 1922, with the Ohio?

A. Oh, somewhere around 2,000 acres.

Q. I mean, how many contracts covered the deal? How many deals did you have that day?

A. We had three, I think, that day.

Q. Had you ever met Mr. Hurley or Mr. Sellery or Mr. Gee, [496] or any of these men before June 15th?

A. Not before the day they walked into my office; not until the day they walked into my office, sir. I never heard of them. The California had been in the deal two or three times trying to make contracts.

Q. How long did it take you to close up the three deals, or whatever number it was?

A. After we got an understanding what it was, what the deals were supposed to be, I just asked them to write them up.

Q. Were there two deals with Troy-Sweet Grass and Ohio, or one?

A. There was—I think there was three different written contracts. One was 1,500 acres. I don't just remember how many. There were three deals that day, and then this deal with——

Q. Were they all Troy-Sweet Grass?

A. No. Potlatch had some acreage. Troy-Sweet

(Deposition of T. P. Jones.)

Grass hadn't yet turned their acreage over to the Potlatch, although they were to do it. They were to do it, and the stockholders were to take the Potlatch stock, and they did, and then the Inland had this other half section, and they made a deal with them the same day. We were all afternoon fixing it up. I don't remember how long; probably from 10:00 o'clock we started the conversation when they came into the office, started the conversation, and it was along in the evening before we got through.

Q. Well, subsequent to 1926, didn't you have another oil company, the Jones Oil Company?

A. Oh, yes, yes. I had that company, too.

Q. Well, didn't you make some deal with the Ohio as to [497] that acreage?

A. No, sir, I never made any deal with the Ohio. They didn't have any acreage in the field at that time.

Q. Well, what time is that you mention now?

A. Well, the Jones oil company was created—took over some acreage of the Potlatch that the Ohio didn't want to drill wells on. They took over some acreage of the Potlatch that the Ohio didn't want, and they drilled some wells on it.

Q. Did the Ohio or Troy-Sweet Grass, did they release from some of those contracts some of the acreage that was included in their contracts?

A. Yes, they did release some of it. I can't just remember what it was. I can't remember the names of it. Give me the map and I can show you where it was.

(Deposition of T. P. Jones.)

Q. If their accounting was all wrong, as you said, how did you enter into those releases with them?

A. I didn't have nothing to do with those. They didn't have any production on that ground. There was some ground where they showed an operation of either \$37,000 or \$40,000 where they had drilled on those leases and got nothing. They couldn't take from this lease and pay for that lease. They could only get off of each lease—If they got production, they could pay the expenses; drill this free well, and then if they got production they could pay the expenses.

Q. Weren't there some other lands that covered the Baker lease that were subsequently leased?

A. No, sir. Every lease with the Ohio was independent by itself. Every lease was included by itself, each lease. One had nothing to do with drilling the well and paying from the production of another lease. That was part of the contract; that [498] this half section with the Ohio would pay itself and that half section would pay itself; each half section would pay themselves.

Q. Well, was the Israel Sinden a producing lease?

A. No, sir.

Q. Didn't that produce gas?

A. Not to amount to anything.

Q. Well, the charges against that lease were included in the same account with the charges against the Irving H. Baker lease and the credits, too, weren't they?

A. No, sir.

Q. They were not?

A. No, sir. They were a separate account.

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Q. Well, the charges as to the Baptiste Sinden——

A. That was another lease that was separate by itself. If they drilled a well on it and didn't get anything, that was their own fault, their own trouble; they couldn't come back on the Baker lease for anything.

Q. What about the teams necessary and feed?

A. They were all the same. Each one was to pay their own. Each lease was to pay for its own.

Q. Let's see this exhibit we had here——

A. Each lease was to pay for its own.

Q. Will you show me in this agreement that you testified to where there is such a provision?

A. What kind of a provision?

Q. That each lease pays for its own expense.

A. This was a lease by itself. It didn't provide—It provides for a free well on this, that they get one free well on that.

Q. You are referring to Plaintiff's Exhibit 2. You say [499] that is a lease by itself. That covers the property described in that, and all of the charges against that property?

A. This don't include the Baker lease at all. We have in our records, I think, someplace, a provision on these leases that the Baker lease—Each of them had a proviso of a free well in it.

Q. (By Mr. Donovan): Do I understand you, Mr. Jones, to say that this Exhibit 2 did not cover the Baker lease?

A. Well, it may. I can't see very good.

(Deposition of T. P. Jones.)

Q. I understood you to say a minute ago that it did not.

A. I was reading the description there, but I can't tell.

Q. Well, will you look at it?

A. Yes, I guess it is on there.

Mr. McCabe: Mr. Jones, does that operating agreement you are looking at describe land in Sections 3 and 4, Township 35 North, Range 2 West?

Mr. Everett: I object to the question even being asked here. This is cross-examination. We are not through with the witness yet.

A. Yes, Sections 3 and 4 are in here.

Mr. McCabe: Now, answer the question.

Q. (By Mr. Everett): Now, you go back to my question a minute. Mr. Jones, do you find the provision in there that makes the charges separate as to each lease that is included in that general description?

A. Will you let me have time to read all of this and see?

Q. Surely. I want you to look at it and see.

A. I don't know whether it is in here or not, but I [500] know that the Baker lease provided for itself and the Sinden and all.

Q. Now, after reading Plaintiffs' Exhibit 2, will you state whether there is any provision in there that provides for separate charges as between leases?

A. I don't find it in there.

Q. When did the Troy-Sweet Grass Oil Syndi-

(Deposition of T. P. Jones.)

cate assign its interest in this lease to Potlatch, Mr. Jones?

A. Well, I couldn't definitely tell you the date. It was sometime after these contracts were made.

Q. Well, was it in 1922 or 1923?

A. In 1923, I think.

Q. Well, at the time of the assignment—I have before me a photostatic copy of an instrument dated August 18, 1923, between Troy-Sweet Grass Oil Syndicate and Potlatch Oil and Refining Company, in which it appears that you assigned everything that Troy-Sweet Grass owned to Potlatch.

A. I think so. Whenever it was done, it was all assigned.

Q. It was all assigned—the whole business?

A. Everything I had.

Q. This instrument I have shows that it was signed Troy-Sweet Grass Oil Syndicate by T. P. Jones, President, attested by J. A. Harsh, Secretary, and it shows it was signed Potlatch Oil and Refining Company by T. P. Jones, President, attested by J. A. Harsh, Secretary. You were acting as president of both companies at that time?

A. When they were signed over and the one was dissolved.

Q. Who owned the shares in the Troy-Sweet Grass Oil Syndicate at that time, or was it in shares? [501]

A. Yes, it was in shares, but I can't remember who all owned it, because Troy-Sweet Grass was created before I got in. Then I bought some shares

(Deposition of T. P. Jones.)

and became the President and Manager of it, and then created Potlatch Oil and Refining Company and transferred it all over to them, and they took entirely stock.

Q. The stockholders in Troy-Sweet Grass took Potlatch stock in exchange? A. Yes.

Q. This meeting that you had on June 15, 1922, where was that, again?

A. In the same offices, Troy-Sweet Grass and Potlatch office and the Inland. It was all right together.

Q. Where was that located in Shelby?

A. It was located on the south side in the old bank building, above the old bank building that used to be there. I forget the name of that bank that used to be there before it went broke.

Q. Was it the front end of the building or back end? A. The top, above.

Q. The second floor?

A. The second floor.

Q. Was it on the south side of the building?

A. The south side of the railroad. That Molts Building, I believe they called it. I don't remember his name now. There used to be a bank there.

Q. Was it a big office or small office, or what size office was it?

A. Well, it was probably as wide as that building and a little bit longer; probably as wide as this building and a [502] little bit longer, divided into four apartments.

Q. Four offices?

(Deposition of T. P. Jones.)

A. Three offices and a sleeping apartment.

Q. Where was it in the town with relation to the railroad?

A. Right south of the railroad and east of the depot a little bit; south of the railroad.

Q. And who was present at the time that you had this meeting at the time you testified that Mr. Hurley and Mr. Sellery and Mr. Gee and Mr. Luke and yourself were there? I believe that was your testimony? A. Yes.

Q. Was anybody else there?

A. Not until we came to the Inland Empire Oil and Gas Syndicate in the afternoon.

Q. Who was there representing the Inland in the afternoon?

A. Mr. Wilson and Mr. Gerlough.

Q. They were there in the afternoon?

A. Yes, or in the evening, whatever time it was in the evening that we made the Inland contract. Troy-Sweet Grass and Potlatch had made theirs first, and they were in their own office.

Q. Now, who was "they"?

A. Gerlough and Wilson.

Q. They were in their own office?

A. Yes, they had an office right in the same building, on a corner of the building. Troy-Sweet Grass and Potlatch had the front end, half of the building.

Q. Who was there at the time Mr. Gee and Mr. Hurley— [503] Who was there when you made the deal?

(Deposition of T. P. Jones.)

A. Me and Mr. Gee and Mr. Hurley. Mr. Sellery came in after we got started.

Q. Was Mr. Luke there?

A. Mr. Luke was in the other room, yes.

Q. He was right there with you?

A. He was and he wasn't. There was two rooms. The door was open. I was in one room talking to them and he was in the other room.

Q. You say Mr. Gee left, or did he just go in the other room and patch this up?

A. No, he went over to his own place, the Johnson Building, I believe they call it. He had rooms over there.

Q. Did Mr. Hurley leave?

A. Mr. Sellery left and Mr. Gee. Mr. Hurley, I believe, stayed and talked with me until they came back.

Q. Where was the contract signed?

A. In the office there.

Q. The contract was signed by you and Mr. Luke, and Mr. Sellery, I believe, as a witness?

A. Yes, sir.

Q. And by Mr. Hurley? A. Yes.

Q. Were you all there at the same time when that was signed?

A. Yes, all there at the same time. When we had the agreement all ready to fix up, we walked in to where Mr. Luke was and we all—because the seal of the Potlatch and Troy-Sweet Grass was in there; not in the room that I was in. We walked in there and signed up the agreement. [504]

(Deposition of T. P. Jones.)

Q. In Mr. Luke's presence and the presence of each other? A. Yes, sir.

Q. Everybody who signed, signed it right there at that time? A. Yes, sir.

Q. Do you know who signed first?

A. Well, I wouldn't be sure whether it was Potlatch or Troy-Sweet Grass or—I think it was the Troy-Sweet Grass probably signed first. I wouldn't be sure which of us signed first, the Ohio or Troy-Sweet Grass.

Q. Of those two that signed, you signed for Troy-Sweet Grass and Potlatch?

A. Mr. and Mr. Luke signed for them.

Q. You don't recall what order, who signed first, or how the papers were handled there?

A. No. We walked in and sat down and Mr. Luke got out his seal, and Mr. Hurley and Mr. Gee was there. Mr. Hurley said it was all right, and I said it was all right, and so we all sat down and signed it.

Q. Did Mr. Gee sign any of the papers?

A. No, he didn't; not to my knowledge. We sat around a desk pretty near as long as that and a little wider, I guess (indicating counsel table in court room).

Q. How many contracts like this one, Plaintiffs' Exhibit 2, were there?

A. Well, the first time there was one, and then he came back. He wanted another piece of ground. I don't remember which one it was, and he wrote up a contract on that.

(Deposition of T. P. Jones.)

Q. They were all identical, were they? [505]

A. They were all identical.

Q. But you don't remember which contract, affecting which property, was signed up first?

A. No, I don't, but I think it was that one there.

Q. You think it was this one?

A. Yes, I think so.

Q. This is Plaintiffs' Exhibit 2, you are talking about?

A. Yes, I think that is the one that was signed first, and then there was another piece of ground, and Mr. Hurley said to Mr. Gee, "You better draw up a contract on that," and I don't know what it was now. He drew up a contract and we signed it. When we got through, Mr. Wilson and Mr. Gerlough came in, because Mr. Gee or Mr. Hurley said they wanted this half section, and he said, "We want this half."

Q. Did they make the same contract with the Inland Empire that they had on the other?

A. The same thing.

Q. And that was the last one that was signed?

A. Yes. He said, "We want this half section." I said, "That is the Inland," and they drew a contract on that and Mr. Gerlough and Mr. Wilson signed that and Mr. Hurley.

Q. That is the contract with the Inland?

A. Yes. I don't remember the description of it now.

Q. Well now, these contracts, were they all 55/45 contracts? A. Yes, every one of them.

(Deposition of T. P. Jones.)

Q. Did you have any other contracts in the field that were 55/45 contracts? A. No.

Q. With anyone else? [506] A. No.

Q. Or did anyone else up there, to your knowledge?

A. I have no knowledge of any other people's contracts at all; only my own.

Q. Were you familiar with the general operations up there, the leases and the deals that were being made?

A. Well, I was trying to be. I had about 30,000 acres.

Q. Well, you were familiar with the transactions that were taking place in a general way?

A. Yes, sir.

Q. That was your business, to be familiar?

A. Yes, sir. I don't know whether I was familiar with all of them or not. I don't think I was, but I—

Q. Was this type the type of contract that was being used in the area about that time?

A. I think that was the first contract that was made in that area.

Q. This was the first one, this Troy-Sweet Grass-Ohio deal?

A. I think that was the first contract that Hurley or Gee or any of them had made in that field; that is, they said it was, anyhow.

Q. You talked to Mr. McFadyen, I think you said, in front of the filling station. Is that right?

(Deposition of T. P. Jones.)

A. Yes, he was getting in a car to go to Casper.

Q. Was anyone else there at that time?

A. No. I was over in the hotel and I seen Mr. Fadyen over there. I got out and went over and asked if he had done anything, or if they were going to do anything about it.

Q. I was just asking if there was anyone else there at [507] all?

A. The filling station man may have been standing there.

Q. Did you ever have any other discussions with Mr. McFadyen at any time?

A. Yes; a couple of times out in the field I talked to him.

Q. Was that before or after this one in 1926?

A. Well, '27, I believe it was, I am telling about.

Q. You think it was '27 you are telling about?

A. Yes. A couple of times before that out in the field I had talked to him. I don't know who introduced me to him personally. I had heard he was there and I went out to see him. It might have been Yealy or it might have been Hungerford. There was a man named Hungerford.

Q. Do you remember his first name or initials?

A. We called him "Slim" Hungerford.

Q. What did he do?

A. At one time he was kind of an assistant field man or something. I don't know what his capacity or business was.

Q. Did he work for the Ohio? A. Yes.

Q. He was one of their regular employees?

(Deposition of T. P. Jones.)

A. He was for quite a while. Then I think he went operating for himself later on.

Q. At the time you signed these contracts with the Ohio, when Mr. Hurley and Mr. Gee were present there in 1922, did you have any motion of your trustees?

A. No. I didn't have no meeting of the trustees. I was supposed to be running the thing and doing what I liked, and I did it. [508]

Q. Did you have any meeting of your Board of Directors of the Potlatch?

A. No, I didn't. There was only me and Mr. Luke there.

Q. Did you discuss the terms and provisions of the contract with Mr. Luke or any of the other officers?

A. No, I didn't. I discussed with me, and that was all.

Q. Did you ever talk to Mr. Firmin before or after that one time? A. No.

Q. About which you testified when Mr. J. W. Freeman and all of you were there?

A. No, I didn't.

Q. That was the only conversation you ever had with him? A. Yes, sir.

Q. Did you ever have any discussions—Do you know Mr. Harold W. Stuart?

A. I knew him. I wasn't acquainted with him very much. I knew him, but I never had any discussions with him much. I just knew him because he was there, and he was here and there and all over.

(Deposition of T. P. Jones.)

I never had much discussion with Mr. Stuart. I had met him and talked with him.

Q. In Shelby? A. In Shelby, yes.

Q. Do you know what position, if any, or do you know if he held any position with the Ohio?

A. I don't. I don't know anything about it. Was he a geologist?

Q. No. This is Mr. Hal Stuart. There is a geologist named Stuart. He is not the one I am referring to.

A. That is the one I am referring to. [509]

Q. The one I am talking about is a lawyer in the Ohio Oil Company.

A. Oh, I never seen him up there. The fellow I met was a geologist, and I used to meet him and talk to him.

Q. You never knew Mr. Hal Stuart?

A. No, I didn't.

Q. Did he ever ask you for any instrument in connection with any of your titles?

A. Not to my knowledge; he never asked me.

Q. Did you ever have any correspondence with him about title matters?

A. Not that I know of; not that I recollect of. Our titles were on record and they could find out what they wanted to about them.

Q. Did you ever have any discussion with Mr. Gee subsequent to that one in the office up there?

A. No, I never did. I never seen Mr. Gee after that.

Q. Did you ever see Mr. Hurley after that?

(Deposition of T. P. Jones.)

A. Yes.

Q. When was that?

A. I couldn't tell you the date, but I met him once or twice.

Q. Was it a long time after or shortly after?

A. Oh, no; shortly afterwards.

Q. You met him there; you made that contract June 22nd?

A. The next summer I met him once or twice. I think it was the next summer I met him once or twice. I don't ever remember meeting him again, although I heard he was there, but I never saw him. I was away when he was there a time or two. I heard he was there. [510]

Q. Did you know Mr. W. H. Holland of the Ohio Oil Company?

A. No. I don't know him by name, sir.

Q. He was a man about my build.

A. Well, there was a lot of men about your build.

Q. General Superintendent of the Ohio, and he was up there sometime, I think. I thought you might have met him.

A. No, I never met him.

Q. Did you have any discussions in the Ohio office with reference to these contracts?

A. In Shelby?

Q. Yes, prior to the time that they were entered into.

A. Prior to the time the contract was entered into?

Q. Yes, in June, 1922.

(Deposition of T. P. Jones.)

A. Before they was entered into?

Q. Yes.

A. Why, there was no Ohio office there.

Q. I thought you testified Mr. Gee went across?

A. Yes. He had come in the day before, I think he told me, and got a room over in the Johnson Building on the south side, and I had been down to Great Falls and drove back that night, and the next morning——

Q. He went over to his room, then, to prepare this contract? A. Yes.

Q. Did you have any discussions any place with reference to this deal other than in your office?

A. No.

Q. That was the only place you had any discussion?

A. Yes. I think it was young Johnson that told me when [511] I came up from Great Falls that morning, that night or that morning. I stayed in Brady, I think, all night. I think it was young Johnson told me there was some fellows from the Ohio up in their building wanted to see me. I said, "Well, I am going over to the office." I was busy. I was trying to get ready to drill a well. I said, "You just tell them that it is just as short over there as it is from my office over to them," and pretty soon they came in.

Q. They came in to your office?

A. Yes, sir.

Q. And you never went to their office at all.

A. No, sir.

(Deposition of T. P. Jones.)

Q. Did you ever advise anyone of the Ohio in 1925 or '26 that you were going to drop this matter of erroneous charges? A. No, sir.

Q. Not even after you talked to Mr. Freeman?

A. No, sir. I never advised anybody I was going to drop it. I never had any intention of dropping it, while I was there.

Q. Well, I had a memorandum here prepared by Mr. Gee March 26, 1927, in which he states: "We have a letter from Billstone (you have one there in evidence) received December, 1925. The Potlatch Oil and Refining Company protested our ten per cent overhead charge. They finally decided to drop the matter and decided we were all right." Do you know any reason why Mr. Gee should have made that statement?

A. I don't know of any reason why he should have made it at all.

Q. As far as you are concerned, you gave him no statement [512] or no indication?

A. No indications at all. I had no intentions of dropping it.

Q. When did you leave the Potlatch Company as president and manager?

A. The latter part of March, '32.

Q. March, '32?

A. I think it was the latter part of March.

Q. Did you voluntarily resign and leave?

A. Yes, sir.

Q. Had your resignation been requested?

A. No, it had not. I went broke, and I was in no

(Deposition of T. P. Jones.)

position to stall around in that business. I owed them a couple of thousand dollars and I had to pay it sooner or later. I had went broke. The Jones Oil Company went broke, so I didn't figure I should be running their business.

Q. As a matter of fact, didn't they sue you about that time for the money you owed them?

A. Who?

Q. Potlatch.

A. Not that I ever heard of. I never heard of any suit. I never heard of any suit that had been suing me.

Q. Neither the Potlatch nor the Troy-Sweet Grass or any of these other companies you were associated with over there instituted any suit against you at or prior to the time you left the company in 1932? A. No, sir.

Q. Did they institute any suits after you left?

A. Not any company that I ever heard of.

Q. You stated you owed them \$2,000 or \$3,000. What was [513] it for?

A. I overdrew my account.

Q. You overdrew your account that much?

A. Yes. I was going broke and I was trying to save myself and I overdrew my account. I expected to pay them some day, and I did.

Q. Were there any suits pending against you at the time you left Shelby in 1932?

A. No, not that I know of. I think this gentleman here (indicating Mr. Donovan) came over to

(Deposition of T. P. Jones.)

investigate something between me and Mr. J. P. Weyerhaeuser.

Q. What was it?

Mr. McCabe: To which we object on the ground it is incompetent, irrelevant and immaterial, not proper cross-examination. It has nothing to do with the subject matter of the suit in connection with which this deposition is taken.

Mr. Everett: I wasn't referring to that particular suit, Mr. McCabe.

Mr. McCabe: Well, you meant any suit between him and the Inland and the Potlatch? I wish you would limit it.

Mr. Everett: No. He answered my question. He said, "This gentleman (referring to Mr. Donovan) came over about another matter between me and Mr. Weyerhaeuser." I wasn't inquiring about that. I was inquiring about a matter of the suit in Montana.

A. There was no suit over there that I ever heard of against me.

Q. Was there any against any of the companies that you represented?

A. Not that I ever knew of. [514]

Q. Am I to understand, then, that at the time you left the company, all your relationships with the company or other directors and so on were entirely pleasant?

A. Yes, sir, and are yet as far as I know.

Q. Did Harris and Hoyt represent your com-

(Deposition of T. P. Jones.)

panies; attorneys at Shelby? Did they represent your company in 1926 and '27?

A. No. I don't know but what I had—I may have had them for some little case. I don't know what it was. I used to go to them and I used to consult with them once in a while about certain matters, and especially on titles once in a while.

Q. Did they represent you in connection with any matter of any claim against the Ohio?

A. No, they did not.

Q. In December of 1927, did you sell any acreage or leases or interest in acreage or leases to the Ohio Oil Company? A. No.

Q. Did you have any past deals with them?

A. No, none whatever.

Q. Either you or any of your companies?

A. Not that I ever knew of.

Q. Did you have an account with the International Refining Company in connection with some of the oil run from some of these leases operated by the Ohio in that field? A. No, sir.

Q. Or did you have any credit with the International Refining Company which you wanted to transfer to your account or any of these [515] accounts? A. None whatever.

Q. Well, I have here a copy of receipt, or authorization, rather, dated Shelby, Montana, April 18, 1928, addressed to the Ohio Oil Company, in which it is stated: "You are hereby authorized to have transferred 3,772.45 barrels Montana oil to

(Deposition of T. P. Jones.)

credit of International Refining Company, pipeage transportation unpaid, and charge to account of International Refining Company.”

A. Signed by who?

Q. Signed by T. P. Jones. Is that your signature?

A. It looks pretty damned much like it, but I don't remember ever seeing that thing before or hearing of it.

Q. Well, is it or is it not your signature?

A. It looks pretty much like it, but I couldn't say it was. I don't remember anything about that. I never seen or heard of anything of that kind that I ever remember. Where did I get the oil to transfer? (Reading.) “You are hereby authorized to have transferred”—I'll be damned if I ever believe I signed that. I don't know.

Q. Is that or isn't that your signature?

A. It looks like it, but I wouldn't swear that I ever signed that. It looks like my writing.

Q. You would swear you didn't sign it?

A. No. I don't know what it would be for. I don't know what I would sign it for. We didn't own no oil.

Mr. Everett: Mark this Defendant's Exhibit 1 for identification, which we now offer in evidence as part of this deposition and ask that it be affixed.

Mr. McCabe: To the offer in evidence of Defendant's Exhibit 1, marked for identification, the plaintiffs object [516] on the ground it is incompetent, irrelevant and immaterial, not proper cross-exami-

(Deposition of T. P. Jones.)

nation, no proper foundation has been laid for the introduction of evidence of the exhibit, and it is not within the issues.

(Whereupon, said Authorization marked Defendant's Exhibit No. 1 for identification, was received in evidence and is hereto attached and made a part hereof.)

Q. (By Mr. Everett): Well, did you or did you not have an oil well on the northwest quarter north-east quarter of the northwest quarter of Section 21, Township 35, Range 1 West, in Toole County, Montana, which was on a ten-acre tract? Did you or did you not have such a well operated by the Jones Oil Company; I believe they were the operators? Does that recall anything to your mind?

A. On a ten-acre tract?

Q. It was on the Franklin S. White lease, wasn't it?

A. Oh, listen. The Jones Oil Company never had that lease. The Ohio Oil Company had it and drew some oil from it, from the Potlatch, and then they turned it back to the Potlatch while I was there, and the Potlatch pumped that for something—I don't remember what it was—sometime, and I don't know but what they are pumping it yet, but the Jones Oil Company never had it.

Q. The Jones Oil Company never had it?

A. No.

Q. That is the Franklin S. White lease?

(Deposition of T. P. Jones.)

A. Yes. I think the Ohio drove four or five wells on that lease.

Q. Didn't you sell that ten acres with the well to the Ohio in 1927, or did you? [517]

A. I did not.

Q. Did the Jones Oil Company or Potlatch sell it to the Ohio in 1927?

A. No. I can't remember of selling any such well as that. That is a well that they had driven; they drilled it.

Q. The oil from that well, or any other well—Did you own that oil, Mr. Jones? Had it been run to your account in the Regina Pipeline Company?

A. No, it hadn't been run to my account.

Q. Had it been run to the account of the Jones Oil Company? A. No.

Q. And wasn't that the occasion of your signing this authorization to transfer it to the account of the International Refining Company?

A. No, because I didn't drill any wells there. The Ohio drilled some wells there on that property. I drilled a couple offsetting it, on sixteen, to the Jones Oil Company. I didn't get nothing to amount to anything.

Q. That doesn't bring anything back to your mind? That transaction went as late as 1928 before it was finally concluded? A. How?

Q. It went as far as the fall of 1928 before it was finally concluded, the matter of transferring that oil on that particular tract?

A. I don't remember. At that time I was in the

(Deposition of T. P. Jones.)

east for a good time. The Potlatch had that lease. I think they have got it yet. I think they took that back from the Ohio. The Ohio drew four or five or six wells there and put a [518] pumping plant on it, and I don't know but that—I don't remember. Let's see. The Jones Oil Company, they took a lease on a part of sixteen there.

Q. Do you remember the Danielson lease?

A. Yes, sir.

Q. Do you remember that you took gas from the Danielson lease to operate the White lease?

A. Yes, I remember doing that, after I took it back from the Ohio.

Q. Do you remember purchasing any oil on the White lease and then subsequently selling that lease to the Ohio? A. No. The Ohio drilled it first.

Q. Then releasing it to the Potlatch?

A. The Potlatch paid them for their pumping plant and took over the lease. I don't just remember. It wasn't much. I don't know why he wanted to do it, but he did. The wells were small. He didn't want to be bothered with them, I guess.

Q. Have you had any correspondence with the Ohio Oil Company since 1932?

A. Not a word.

Mr. Everett: That is all.

Mr. McCabe: That is all. [519]

Certificate of Notary Public

State of Washington,
County of Spokane—ss.

I, Geo. J. Stewart, a Notary Public in and for the State of Washington, do hereby certify that the witness T. P. Jones, also known as Thomas P. Jones, in the foregoing deposition named, was by me duly sworn upon oath to testify the truth, the whole truth and nothing but the truth in said cause; that said deposition was taken pursuant to stipulation, a duly certified copy of which stipulation is hereunto annexed and hereby referred to, on the 14th day of November, 1947, between the hours of 10:00 o'clock in the forenoon and 1:45 o'clock in the afternoon of that day; that I stenographically took and transcribed and reduced to writing in typewritten form and recorded the testimony of said witness, and when completed said deposition was carefully read by said witness and by him stated to be correct and was by him subscribed in my presence.

I do hereby further certify that all objections made to the evidence presented have been noted upon said deposition and, at the time of the taking of said deposition, no objections were made to the qualifications of the officer taking the deposition nor to the manner of taking it nor to the conduct of any party nor any other objection to the proceedings, excepting objections to the evidence presented, which said objections to evidence have been noted upon the deposition as aforesaid.

I do hereby certify that all writings, documents

and exhibits referred to by the witness and offered as a part of his testimony are hereunto annexed and marked, respectively, Plaintiffs' Exhibits Nos. 2, 26, 27, 28, 29 and Defendant's Exhibit No. 1.

I do hereby further certify that I am not a relative or employee or attorney or counsel of any of the parties, nor am I a relative or employee of such attorneys, or counsel, and I am not financially interested in the said action.

In Witness Whereof, I have hereunto subscribed my name and affixed my official seal as a Notary Public this 9th day of December, 1947.

[Seal] GEO. J. STEWART,
Notary Public for the State of Washington, Resid-
ing at Spokane, Washington.

My commission expires October 19, 1950.

[Endorsed]: Filed December 22, 1949. [520]

[Title of District Court and Cause.]

DEPOSITION OF ROBERT E. WILSON, ALSO
KNOWN AS R. E. WILSON

Appearances:

E. J. McCABE,
Attorney for Plaintiffs.

W. H. EVERETT,
LOUIS P. DONOVAN,
Attorneys for Defendant. [525]

Be It Remembered, That pursuant to the duly certified copy of Stipulation hereunto annexed, and on the 12th day of November, 1947, at my office at Kalispell, State of Montana, before me, Merritt N. Warden, a Notary Public in and for the State of Montana, duly appeared Robert E. Wilson, also known as R. E. Wilson, a witness produced on behalf of the Plaintiffs in the above-entitled action, now pending in the above-entitled Court, who being first by me duly sworn upon oath, was then and there examined and interrogated by E. J. McCabe, of counsel for said Plaintiffs and by W. H. Everett, of counsel for the said defendant, and testified as follows:

Direct Examination

By Mr. McCabe:

Q. Mr. Wilson, please state your full name, age and residence.

A. Robert E. Wilson, 65 years old. Temporarily,

(Deposition of Robert E. Wilson.)

I am here at Kalispell. Browning has been my voting address.

Q. And how long have you been a resident of Montana, approximately?

A. Since 1922. [526]

Q. Did you ever reside in Shelby, Montana?

A. Yes.

Q. And, if so, during what years did you reside there?

A. In 1922, in 1922 the early part, to somewhere of '25 or '26.

Q. Approximately, you resided there about four years?

A. Without checking up I would say approximately four years.

Q. Did you ever hear of the Troy-Sweet Grass Oil Syndicate? A. Yes.

Q. Do you know if they were engaged in business in Montana? A. Yes.

Q. Do you know what the nature of their business was? A. Oil and gas development.

Mr. Everett: Just a minute. For the purpose of the record, Defendant, the Ohio Oil Company, wishes to state that all parties herein have heretofore stipulated that each and all of Defendant's objections as to relevancy, materiality and competency of the testimony of Plaintiff's witness, R. E. Wilson, have been expressly reserved as shown by the stipulation which Mr. McCabe has had affixed to the deposition of Mr. Wilson. I understand that upon any trial in which such deposition is permitted to be used, that

(Deposition of Robert E. Wilson.)

the presentation thereof will be question by question, so that defendant shall have the unrestricted and unqualified right to make any objection it wishes as to each such question so presented, this without prejudice to any right Defendant may have or wish to assert as to the entire deposition. For example, if it should be stricken from the files, should it appear therefrom or from the pleadings, files or records in this cause, that this is an attempt to open up a stated account or to vary the terms of a written contract by parol evidence [527] or that it is in violation of the rules which do not permit testimony as to oral conversations or direct transactions with any deceased employee or agent of this defendant, or that it appears that the transactions complained of have been ratified or confirmed, or that the statute of limitations or laches and stale demand has barred any right of recovery, or if it appears that the plaintiff's, or any of them, are estopped from questioning any of the items referred to in the pleadings, or if for any adequate reason such deposition should be stricken in its entirety; if that is the correct statement, Mr. McCabe, of our understanding, then we do not expect to assert our specific objections to each question at this time that you ask Mr. Wilson, and I think that the deposition will be shortened by that.

Mr. McCabe: That is agreeable, and that is our understanding, with the exception that no objection may be urged at the trial as to the form of the question, as provided for in the stipulation for the taking of the deposition.

(Deposition of Robert E. Wilson.)

Mr. Everett: The stipulation stated no objection would be made as to the form of the question.

(Direct examination of Mr. Wilson continued by Mr. McCabe.)

Q. Are you acquainted with T. P. Jones?

A. Yes.

Q. And are you acquainted with Jean Gerlough?

A. Yes.

Q. How long have you known these gentlemen, respectively?

A. Jones, about something like 33 years. Gerlough, since 1922.

Q. Did you, at any time, sign with T. P. Jones and Jean P. Gerlough, a writing, or written instrument, denominated [528] "Agreement and Declaration of Trust of Inland Empire Oil and Gas Syndicate," back in the year of 1922?

A. Yes. We formed the Syndicate in 1922, the Inland Empire.

Q. Were you at any time ever connected in any capacity with Inland Empire Oil and Gas Syndicate?

A. Yes, I helped organize it and I was president of the board of trustees.

Q. And were you trustee under the terms of that agreement? A. Yes.

Q. And did you have any official title?

A. Well, I was just designated as president of the board of trustees.

Q. Who was general manager of the Syndicate?

(Deposition of Robert E. Wilson.)

A. I was acting as so.

Q. And how long did you act as president and general manager?

A. From the time of the forming until—I don't know, I think it was 1925 or 1926.

Q. That is when you left Shelby?

A. Yes. That is only an approximate time. I have been clear away from it, for how long I would have to go back on the records to make a definite statement as to the time I left there.

Q. Did you know, while you were acting as president and general manager of the Inland Empire Oil and Gas Syndicate, the following named persons:

A. M. Sellery? A. Yes.

Q. Mr. A. M. Gee?

A. I rather think he was attorney for the Ohio Oil Company.

Q. Well, did you know Mr. Gee who was acting, or appeared to act, as attorney for the Ohio Oil Company? A. I didn't know him. [529]

Q. And Mr. John McFayden?

A. Yes, he was superintendent of the Rocky Mountain division.

Q. Was that particular McFayden also known as Jack McFayden?

A. That was what he was commonly called, Jack McFayden.

Q. Did you know Mr. L. J. Yealy?

A. Yes.

Q. And did you know Mr. McCracken?

A. Yes.

Mr. Everett: What McCracken?

(Deposition of Robert E. Wilson.)

A. I think Virgil was his name.

Q. To identify the man, did you know Mr. McCracken that worked for the Ohio Oil Company at Shelby, back at the time when you were acting as president for the Syndicate? A. Yes.

Q. Now, at the time you were acting as president and general manager of the Inland Empire Oil and Gas Syndicate, do you know whether that Syndicate was interested, or, that is, you understood it was interested, in an operating agreement originally purported to have been made between the Troy-Sweet Grass Syndicate and the Ohio Oil Company?

A. We had pending on the Baker Lease—Irvig H. Baker lease—an agreement with the Troy-Sweet Grass, or Potlatch Oil and Refining Company, that had not yet been finished or culminated at the time of the operating agreement between the Ohio Oil Company and the Troy-Sweet Grass. I knew of it.

Q. Did you receive information later that the Inland Empire Oil and Gas Syndicate had purchased an interest in the Baker Lease, and in that operating agreement?

A. We acquired the interest in the Baker Lease subject to the Ohio Oil, the operating agreement with the Ohio Oil Company. [530]

Q. Now, did you ever discuss with Mr. John McFayden any matters in connection with expenses or charges which you asserted to him were improper charges?

Mr. Everett: Just a minute. For the record again I want this objection to show. Defendant objects

(Deposition of Robert E. Wilson.)

to this question and to any testimony in response thereto, or to any similar or related line of questioning and testimony, for the reason that R. E. Wilson, either individually or as one of the assignors or owners, or as an official of the present party Plaintiff, is not competent to testify to any oral conversation, direct transaction, or oral communication with Mr. John McFayden, Mr. F. E. Hurley or Mr. A. M. Sellery, all deceased. In support of this objection, allow me to state that these men were agents and employees of the Ohio Oil Company and are now, and have for many years been, deceased, and if, Mr. McCabe, my statement in that respect isn't sufficient, I can produce death certificates and estate proceedings into this. May it be understood that our same objection—our objection, rather, is to the incompetency of Mr. Wilson to testify in this regard. It extends to all questions and testimony as to——

Mr. McCabe: Any deceased officials?

Mr. Everett: Yes.

Q. Now, did you ever discuss with Mr. John McFayden any matters in connection with expenses or charges which you asserted to him were improper charges under the operating agreement which you have heretofore mentioned in your testimony?

A. Yes.

Q. Just tell in substance what you said to him and what he said to you. [531]

Mr. Everett: It is understood our objection is in?

Mr. McCabe: Yes.

A. I can state it this way: when the operation

(Deposition of Robert E. Wilson.)

began on the Baker Lease after the oil production, we began to get monthly statements from the Ohio Oil Company directly—the Inland Empire Oil and Gas Syndicate—but there was a lot of charges there we, as the trustees, didn't agree to. They were not in the verbal agreements at all, nor, as we thought, up to the contract.

Mr. Everett: Now, I have another objection that I would like to put in right here, in view of his statement just now. We object to any questions or testimony along this line, or to any similar or related line of questioning and testimony for the reason that there has already been testimony to our written agreements and operating contracts in effect between the parties, or their representatives or predecessors or successors in interest, and one of which agreements is shown by the exhibit, Plaintiff's Complaint herein. No mistake or imperfection of the writing is put in issue by the pleadings, nor is the validity of the agreement the fact in dispute. May it be understood, Mr. McCabe, this same objection goes with reference to similar questions and answers, and that eliminates necessity of making them each time.

Q. You may continue, Mr. Wilson.

A. (Continuing): When these monthly reports began to come we would then go over them, and then we took it up with the nearest—the local officer there, Mr. Yealy, and talked to him, and I took it up with Mr. McFayden on one trip, and Mr. Yealy together, and called attention to things—I can't say

(Deposition of Robert E. Wilson.)

just now just what, they were things [532] we didn't think the charges should be in there.

Q. In reply, what did he say, if anything, to you?

A. Well, as I recall back, he referred us to their auditing department and the statement that the Ohio Company was a reliable company and whatever was wrong would be made right. Words to that effect, in that nature.

Q. After your conversation with Mr. McFayden, did you employ any attorneys, that is, did Inland Empire Oil and Gas Syndicate employ any attorney or attorneys to represent them in connection with questions as to proper charges being made by the Ohio Oil Company under the contract?

A. Freeman, Thelen and Frary were already our attorneys for what legal work we had up to that time.

Q. And were they requested to act for you in this Ohio Oil Company dispute?

A. As I recall it, through the—through Mr. Jones, through the Potlatch Oil and Refining Company—successors to the Troy-Sweet Grass—our objections were of the same nature and jointly, and whatever course the Potlatch, the parent company took in the—I wouldn't say the parent company, but we took over acreage from them—we would back them up in it.

Q. And do you know whether Freeman and Thelen were later employed to represent the Inland Empire Oil and Gas Syndicate and the Potlatch Oil

(Deposition of Robert E. Wilson.)

and Refining Company for the matter of taking care of this dispute?

A. I can't say definitely on that. Up until the time I left there and was sick and got clear out of the picture, it was the intention to go ahead, if we couldn't make a settlement, to go ahead and take it to court to get an adjustment on it. I think ours was in the nature of [533] backing Mr. Jones' company, if I make myself clear on that. If I may say, they had made the original contract. It was them that made the original contract.

Q. Mr. Jones was a party to the original contract?

A. Yes, regular working agreement, his company was.

Q. On behalf of whom?

A. The Troy-Sweet Grass Oil Syndicate.

Mr. Everett: For the record, I want to object to the preceding questions with Mr. Wilson as to conversations and so forth with Mr. McFayden, not only for the reasons previously stated as incompetency and the other objection on the parol evidence phase, but as to the form of the question, in that the time and place has not been asked for nor identified as to which or where said conversations were alleged to have taken place, nor as to whom were present.

Q. Mr. Wilson, according to your best recollection, about what year was it, or years, that the conversations that you had with Mr. Jack McFadyen alone, and Mr. Jack McFayden in the presence of

(Deposition of Robert E. Wilson.)

Mr. Yealy, was? Do you remember the approximate years?

A. I can't give you any dates on that. The record will show when the Ohio Oil Company began issuing statements to the Inland Empire Company and the files and letters would show. I believe there was correspondence on the same matter. It would approximately fix the dates as being sometime after the first few monthly statements began.

Q. And were those conversations while you were living at Shelby? A. Yes.

Q. And between the time when you became connected with the [534] Inland Empire Oil and Gas Syndicate and the time you left, as you have heretofore testified?

Mr. Everett: We object to that question as being leading. A. Yes.

Mr. McCabe: I believe that is all.

Cross-Examination

By Mr. Everett:

Q. What was your connection with the Troy-Sweet Grass Oil Syndicate in 1921?

A. I had bought a few shares of stock, that was my only connection with it.

Q. Was that a corporation?

A. No, that was a common-law trust.

Q. You were an owner of a beneficial interest in it in 1921?

A. That or the early Spring of 1922.

Q. Were you an owner of beneficial interest in

(Deposition of Robert E. Wilson.)

the Troy-Sweet Grass at the time the Inland Empire acquired from it an interest in the Baker Lease?

A. Yes.

Q. That same time you were also one of the trustees and beneficial owners of Inland Empire Oil and Gas Syndicate, a common-law trust?

A. On that last statement, you see, this has been a long while. I have been out of the picture. I have been a sick man part of the time. Whether my stock was issued as Troy-Sweet Grass Syndicate stock or issued as Potlatch Oil and Refining stock, successor to the Troy-Sweet Grass——

Q. Well, if it will refresh your memory any, I have a certified copy of an agreement dated May 6, 1922, which purports to be an agreement and declaration of trust of the Inland Empire Oil and Gas Syndicate, and it has been entered into between R. E. Wilson of Boville, State of Idaho, Jean P. Gerlough, Moscow, State of Idaho, and [535] T. P. Jones of Boville, State of Idaho, hereinafter called subscribers, and R. E. Wilson, Jean Gerlough and T. P. Jones as trustees. That is dated May 6, 1922, and appears to have been signed by yourself. You are the R. E. Wilson referred to in that agreement, are you?

A. With the Inland Empire Syndicate, yes.

Q. On that date you, Mr. Gerlough and Mr. Jones were, according to the recital of the instrument itself, you were the subscribers and you were also the trustees of Inland Empire Oil and Gas

(Deposition of Robert E. Wilson.)

Syndicate, is that correct? A. That is correct.

Q. And you acquired from the Troy-Sweet Grass Oil and Gas Syndicate, that is, the Inland Empire Syndicate acquired from the Troy-Sweet Grass Syndicate an undivided interest in the Baker Lease in the Southwest Quarter of Section 3 of the Southeast Quarter of Section 4, Township 35 North, Range 2 West, Toole County, Montana?

A. Those section numbers, that is all out. We acquired an in interest in what is known as the Irving Baker lease.

Q. Prior to that time, you testified that in 1921 you were the owner of a beneficial interest in the Troy-Sweet Grass Oil Syndicate?

A. It was in 1922, rather. It would be early 1922 instead of that 1921.

Q. Did you, as president and manager of the Inland Empire Oil and Gas Company, address any letters to the Ohio Oil Company with reference to the monthly account you have testified about?

A. It runs in my mind I did, that we took it up with them in the regular way. The records will show. The files of the Inland would show the copies of letters. [536]

Q. Well, what were the nature of those letters?

A. I would say offhand protesting the charges we thought shouldn't be in there.

Q. Did you receive any answer from the Ohio with reference to those protests?

A. That again would have to go to the files. I don't recall.

(Deposition of Robert E. Wilson.)

Q. You don't remember whether you received any answer or not?

A. I don't recall what correspondence came back on the matter.

Q. With the monthly statements that were rendered to you, did you receive any payments from the Ohio?

A. We received payments from the Ohio Oil Company.

Q. And the charges that were made were those that were made under the 1922 agreement between the Troy-Sweet Grass and the Ohio, with reference to which you have testified—the operating agreement?

A. Yes, that was all under the same operating agreement.

Q. Where did the Inland Empire have its offices? A. In Shelby.

Q. When did you leave there?

A. Oh, I would have to look up some of the records back to see whether it was 1925 or 1926. Somewhere along in there. I went to Spokane from there.

Q. During the time you were there, did the Inland Empire share offices with the Potlatch or with the Troy-Sweet Grass?

A. We were in the same building, separate offices.

Q. But connecting with each other or entirely separate? A. Entirely separate.

(Deposition of Robert E. Wilson.)

Q. Would you explain the way it was on the ground as you remember it? [537]

A. It was over the old bank building on the north side of the town. The upstairs come up the hallway and our office set entirely separate from their office in front.

Q. You testified, I think, that you don't remember whether it was 1925 or 1926 that you left there?

A. I just don't remember.

Q. Did you resign your job as president and manager at that time?

A. Yes.

Q. Do you recall the circumstances which brought about that resignation?

Mr. McCabe: Objected to as incompetent, irrelevant and immaterial and not proper cross-examination.

A. Sickness. Nervous breakdown among other things.

Q. Is that all you recall with reference to your resignation, Mr. Wilson?

A. Well, there was always disagreement, as there always is among trustees and directors and so forth.

Q. Who, at that time, were the trustees or directors of Inland Empire?

A. Myself, Jean P. Gerlough, T. P. Jones. Does that record show where Mr. Harsh was or not? I don't recall. I don't have any such record.

Q. Who were the directors and officers of the Potlatch Oil Refining Company at that time?

(Deposition of Robert E. Wilson.)

A. Well, there was Mr. Jones.

Q. Mr. T. P. Jones?

A. Yes. Mr. Harsh. There was a Mr. Ball of Seattle. Let's see, there was some lumberman, I can't recall his name just now

Q. Was the Troy-Sweet Grass dissolved at that time, the time [538] you left, was there still a Troy-Sweet Grass still in existence?

A. No. It was operating—I think it was all out of the picture. It was all Potlatch Oil and Refinery then.

Q. Did you hold any stock in the Potlatch Oil and Refining at that time, just prior to your leaving Shelby? A. Yes.

Q. What did you do with that stock at the time you left—prior to the time you left?

A. Well, I retained it. I hadn't disposed of the interest.

Q. Your interest in Inland Empire, what did you do with it at the time you left?

A. I had sold some of it and I signed over some of that stock to the—I don't know whether it was to the Inland or to Mr. Harsh and Mr. Ball. I rather think it was the Inland. I released it.

Q. What was the consideration for your transferring that interest?

Mr. McCabe: To which we object on the ground it is immaterial and not proper cross-examination.

A. I just don't recall the full amount. It might be something I could go back over later on.

(Deposition of Robert E. Wilson.)

Q. Was the company asserting any claims against you at that time?

A. I don't know. The records would show, what they have in the Inland, if they would be accessible.

Q. Were they or were they not asserting any claims against you?

A. I don't recall. Their books would show whether there was anything charged against me or not.

Q. Well, do you remember whether you were released from any [539] such claims upon assigning the stock to the company at the time you left?

A. I don't recall any such thing.

Q. You think the records should show what transpired there?

A. I should think they would, yes. There was always kept a record. Our books were always audited by a certified public accountant.

Q. Are there any such records at this time, Mr. McCabe?

A. Not that I know of. (By Mr. McCabe.)

Q. Do you have any interest in the Inland Empire Syndicate at the present time? A. No.

Q. How long has it been since you had an interest in the Inland Empire?

A. Oh, I would say whenever—1925 or 1926, somewhere along in there.

Q. Do you recall what disposition was made of your interest at that time?

(Deposition of Robert E. Wilson.)

Mr. McCabe: Objected to on the ground that it is repetitious and not proper cross-examination.

A. I was sick and down on my back and Mr. Harsh and Mr. Ball came up and I made an assignment by the stock for a consideration, I can recall that, but the amount as you asked me before, I don't—

Q. Did they at the same time ask you for your resignation when they come up to see you that you testified about?

A. I don't recall at that time that they did.

Q. But your resignation was given about that time, is that correct?

A. Whether it had been given before that or not I don't know.

Q. What interest, if any, do you now have in the Potlatch Refining Company? [540]

A. I have some shares there, a regular stockholder.

Q. How many shares do you have?

A. Somewhere around better than five thousand shares.

Q. How many shares did you have in Potlatch in 1925 or 1926 at the time you left Shelby?

A. It would be the same amount. Their records will show that.

Q. When did you first acquire that five thousand, approximately five thousand, shares?

A. At the time in 1922, as I recall it, all of it in 1922.

(Deposition of Robert E. Wilson.)

Q. What did you pay for that stock or was it acquired in a trade?

A. Well, I bought it regular through—when the Troy-Sweet Grass was in existence, and I was issued Potlatch stock. Whatever the shares were in that is what I got.

Q. In exchange for your beneficial interest in the Troy-Sweet Grass Syndicate?

A. I believe that is it. I don't recall I was ever issued any Troy-Sweet Grass stock.

Q. But you did have an interest in Troy-Sweet Grass?

A. It may have come at the time when they were changing it over to the Potlatch, reorganizing.

Q. But the Potlatch stock was issued to you in exchange for your beneficial interest in Troy-Sweet Grass?

A. Yes, if that is the way it would work out.

Q. The monthly statements which were rendered by the Ohio Oil Company on the Baker Lease came to your personal attention? A. Yes.

Q. And you checked each of those statements yourself? A. Yes. [541]

Q. And items which you thought were incorrectly charged, you called to the attention of the Ohio Oil Company?

A. By the means I have testified to, yes.

Q. And what response did you get from the Ohio Oil Company to your letters?

Mr. McCabe: Objected to on the ground that it

(Deposition of Robert E. Wilson.)

is not the best evidence and is improper cross-examination.

Mr. Everett: You brought it out on direct examination that he had received monthly accounts and that he had objected to them. We are entitled to know.

Mr. McCabe: I am not waiving my objection. I am standing on my objection.

A. That I don't recall. You will have to look up the files of the Inland Empire there to find what that answer would be.

Q. Did Inland Empire have any interest in the Kevin-Sunburst field or the Sweet Grass-Arch field, other than the Baker Lease? A. Yes.

Q. Was the Ohio Oil Company the operator of any of those other leases? A. No.

Q. Do you remember who or what other company was the operator of the other leases you mentioned and where were the other leases?

A. That would have to show on your records there. I think you probably both got it. There was, I don't think, anybody operating in the other leases.

Q. I have here a copy of a Western Union telegram, signed by—addressed to R. E. Wilson, Davenport Hotel, Spokane, Washington, and signed by J. P. Gerlough, with the date [542] line Shelby, Montana, September 25, 1923, in which it is stated, "Letter from Hurley states all charges fair and that we have no just cause for complaint. Suggest would discontinue interest on money if we wish to

(Deposition of Robert E. Wilson.)

pay our share current operating expenses." Do you recall, or did you receive, such a telegram?

Mr. McCabe: To which we object on the ground it is incompetent, irrelevant and immaterial, not the best evidence. The telegram speaks for itself, and it is improper cross-examination.

Q. Did you have such a telegram, Mr. Wilson?

A. I don't recall anything about it.

Q. Would you say you never received a telegram like this?

A. I wouldn't say I didn't. This is all back a great many years ago and I don't—it just doesn't register with me at all.

Q. Where would the original be?

Mr. McCabe: Just a minute, we object to this that it is improper cross-examination and calls for a conclusion of the witness.

Q. You testified that you were the manager in 1923, president and manager of Inland Empire. I show you the copy and see if you remember receiving the original of that, and if you know where it is.

A. I don't recall.

Q. You stated on direct examination that you had a deal pending with Troy-Sweet Grass at the time the operating contract between that company and the Ohio was entered into.

Mr. McCabe: Objected to on the ground that it is an improper statement of the testimony of the witness. [543]

A. You asked me back there if it was on this Baker Lease. That is the uppermost here. I think

(Deposition of Robert E. Wilson.)

I said I don't recall whether we had completed the deal or not, whether the papers had been signed or not on the Baker lease at the time the Ohio Oil Company and the Troy-Sweet Grass entered into their operating agreement.

Q. Were you present at the time the Troy-Sweet Grass-Ohio deal on the Baker Lease was entered into—the operating agreement?

A. I was not present then.

Q. You were not present at that time?

A. No.

Q. Did you ever hold any office in the Troy-Sweet Grass Oil Syndicate?

A. No. There was a time or two when Mr. Jones and Mr. Harsh, their treasurer, was away and I kept their papers and so forth. I don't think there was ever a time that I was designated in any way as an official of the company. It was more in the nature of——

Q. You did that as an accommodation to them?

A. Yes.

Q. You were not a trustee of the Troy-Sweet Grass? A. No.

Q. At the time you acquired your interest—that is, the time the Inland Empire acquired its interest in the Baker Lease, you were familiar with the terms of the operating agreement between Troy-Sweet Grass and Ohio?

A. That is answered back here a little farther. The deal was pending, whether it had finally been

(Deposition of Robert E. Wilson.)

concluded in Potlatch and the Inland Empire, or whether papers had been signed at the time of the agreement or not, I don't recall. [544]

Q. Did you have anything to do with the making of the operating agreement between Troy-Sweet Grass and Ohio? A. No.

Q. Do you recall at what time the Inland Empire acquired its interest in the Baker Lease?

A. No definite date.

Q. Do you recall the description of the Baker Lease? A. I don't.

Q. Do you recall the approximate amounts that were paid to the Inland Empire for its interest—its 22.5% interest in the Baker Lease during 1923, 1924, 1925 or 1926 until you left that? Do you remember?

A. I don't recall those figures. I think that all that would be available. They would have the record of it.

Mr. Everett: I understand that, and Mr. McCabe has stated, they have copies of all monthly statements.

Mr. McCabe: Not all of the monthly statements. I think we have copies of most of the statements that were rendered, but without examining all of those statements—there are a considerable number—I wouldn't want to say they are all there for the reason that is a matter for somebody that knows of the Inland or the Potlatch. I have a bunch of statements which I think are most of them, but

(Deposition of Robert E. Wilson.)

I wouldn't make the representation that I have all of them.

Mr. Everett: Those will be available to us?

Mr. McCabe: Yes.

Mr. Donovan: And that is from 1922 down to the present day?

Mr. McCabe: Yes. There might be months skipped, but I have statements covering it in a general way in all those years from 1922 down to 1942, inclusive.

Mr. Everett: Is there any contention that monthly statements [545] were not given by the Ohio?

Mr. McCabe: No.

Mr. Everett: Or that in those months in which there were credit balances, they weren't accompanied by check?

Mr. McCabe: Oh, no, there won't be any question as to checks being given at the end of these months.

Mr. Everett: Or that when there was a credit balance, a check accompanied the statement?

Mr. McCabe: Well, there were some months there wasn't any payments made at all.

Mr. Everett: I said if there was a credit balance.

Mr. McCabe: Yes.

Mr. Everett: The check accompanied the statement?

Mr. McCabe: Yes.

(Deposition of Robert E. Wilson.)

Mr. Donovan: You said copies. You mean copies sent to one of your clients?

Mr. McCabe: Yes.

Mr. Donovan: I mean they are the original instruments received by the plaintiffs?

Mr. McCabe: Yes, exactly.

(Cross-examination of Mr. Wilson by Mr. Everett continued:)

Q. I have before me a certified copy for the assignment of oil and gas lease from the Troy-Sweet Grass Oil Syndicate to the Inland Empire Oil and Gas Syndicate, which is recorded in Book 4 of Assignments, at page 258, of the records of Toole County, Montana, in which it is stated that the Irving H. Baker Lease of 1921, between Baker, lessor, and Troy-Sweet Grass Oil Syndicate, covering the Southwest Quarter of Section 3 and the Southeast Quarter of Section 4, Township 35 North, Range 2 West, given the recording reference of that lease, and also reciting [546] that subsequent to such lease that the Troy-Sweet Grass entered into an agreement with the Ohio Oil Company, "which said operating agreement was filed with the County Clerk and Recorder in and for said county of Toole on the 16th day of June, 1922," given the recording reference, and which recites further that the Inland Oil and Gas Syndicate is desirous of purchasing an undivided one-half interest of the said Troy-Sweet Grass Oil Syndicate, "as subject to the interests of the Ohio Oil Company, a corporation

(Deposition of Robert E. Wilson.)

in the said lease above-described and shown by the assignment filed June 12, 1922," and then goes on and conveys to the Inland Empire Oil and Gas Syndicate an undivided half interest, subject to the rights of the Ohio, which said instrument is not dated, but which is acknowledged by T. P. Jones and J. A. Harsh, as president and secretary of Troy-Sweet Grass, before John N. Thelen, Notary Public, on January 1, 1923. Was the original of that instrument delivered to you, Mr. Wilson?

A. I don't recall that. That assignment to us there undoubtedly was.

Q. Well, it recites that it was made subject to the operating agreement to, or with, the Troy-Sweet Grass and Ohio. Is that a correct statement?

A. Yes, that is right. Our interest was subject to the operating agreement.

Q. Did you know the terms and provisions of the operating agreement at the time of this assignment?

A. I don't recall on that.

Q. Would you say that you were not familiar with the terms and provisions of the operating agreement at the time of this assignment? [547]

A. I can only say that we had talked over the general terms of what the operating agreement would be if it hadn't already been made and we went ahead and took the lease subject to that it interfered with our going ahead and making—finishing the deal on the lease, if that is an answer to it.

Q. You testified that you had nothing to do or, rather, that you were not in on the settlement of

(Deposition of Robert E. Wilson.)

the terms of the operating contract between Ohio and Troy-Sweet Grass.

A. I was not there at the time of the signing of the contract, operating agreement.

Q. Let me ask you this question, then. If you were not present at the time the Troy-Sweet Grass contract was made up and you took an assignment of an interest that was covered by that operating agreement, wouldn't it be reasonable to assume you were familiar with the terms and provisions of that operating agreement prior to the time you took the assignment, which states that it is subject to that contract?

A. That is reasonable to believe. I was familiar with the terms of the agreement or what they were to be. Whether I had read the contract or whether it was in general discussion with my own people and Mr. Sellery and others that I heard what it was to be——

Q. Well, if you can't remember that, how can you remember what Mr. McFayden is supposed to have said?

Mr. McCabe: We object to that question on the ground it is argumentative.

Mr. Everett: This is cross-examination.

A. I don't remember the exact words of Mr. McFayden, only in general reply when I am answering. This other was by [548] discussion or I had read the contract, one or the other, I don't remember which.

(Deposition of Robert E. Wilson.)

Q. But were you familiar with the terms of it?

A. I have answered before I was familiar with what the operating contract was to be.

Q. Was Mr. J. W. Freeman in Shelby, at the time the operating agreement was drafted?

A. I don't recall.

Q. Who was your attorneys at that time?

A. For anything we may have had it would be Freeman, Thelan and Frary.

Q. Which member of that firm usually represented you?

A. Well, there was the whole firm. Most of their work was for the Potlatch Oil and Refining Company.

Q. Was any member of that firm residing in Shelby at that time?

A. I don't think so. Mr. Thelen was up there, Frary was up there quite often, and as I recall, Mr. Freeman was quite often up there at court, not necessarily on our business. He was quite often up there.

Q. They represented Inland Empire in connection with all of its legal matters?

A. So far as I recall.

Q. Were there any other firms of attorneys that represented you? A. Not to my knowledge.

Q. Who were the other trustees of Inland Empire Oil and Gas Syndicate during the time you were in Shelby?

A. Mr. Jones, Mr. Gerlough, Stanley H. Hodg-

(Deposition of Robert E. Wilson.)

man, and I think the record would show it over there, a Mr. J. A. Harsh.

Q. Those were all who acted as trustees during the time you were there? [549]

A. I think so.

Q. Who were the trustees at the time you acquired the interest from Troy-Sweet Grass in the Baker Lease?

Mr. McCabe: To which we object on the ground it is not the best evidence and is improper cross-examination, and the document speaks for itself, the document of assignment.

A. Look up the record on that. Haven't you got a purported copy of it there somewhere?

Q. I am asking your recollection.

A. You would have to go back there and find out whether Stanley Hodgman was trustee at that time with the rest of us or not, I don't recall.

Q. You don't remember who the trustees were at that time?

A. I remember myself, Gerlough and Jones, but whether Hodgman, who was appointed a trustee, was at that time or not——

Q. Do you recall at what time or at what place, or at what times or what places you had these discussions with Mr. McFayden about which you have testified?

A. I can't recall the dates on that, but it was at the Ohio Oil Company's office in Shelby.

Q. During the time that you were in Shelby yourself?

A. Yes.

(Deposition of Robert E. Wilson.)

Q. That would be prior to 1925 or 1926, whenever you left there? A. Yes.

Q. But you can't state just when it was during that time?

A. No, I couldn't give you no definite date.

Q. Well, did you discuss these statements with him once or twice, or how many times? [550]

A. I only recall one definite meeting with Mr. McFayden at their office with myself.

Q. Who was present at that meeting?

A. Mr. Yealy.

Q. Mr. Lee Yealy. Was anyone else present?

A. I don't think so. I don't recall that there was.

Q. You know Mr. McFayden is dead?

A. I hadn't known it until you said he was deceased.

Q. Do you recall having received any money or any check from the Ohio subsequent to the time you had that discussion with Mr. McFayden?

A. I don't recall.

Q. Did you receive any money from the Ohio?

A. The Inland Empire did receive money from the Ohio Oil Company, yes.

Q. Do you remember whether it was before or after you had the discussion with Mr. McFayden, or both before or after?

A. I don't recall that point. It is reasonable to assume that we had not yet began to receive checks on that. It is reasonable to assume that we would protest as soon as possible on that.

(Deposition of Robert E. Wilson.)

Q. Do you recall having called any erroneous charges to the attention of the Ohio, any claimed erroneous charges?

A. Well, that was the purpose of seeing Mr. McFayden. I don't recall what those charges are now. Correspondence over there would show it, I don't recall. I couldn't give you the statement of what charges.

Q. Did you receive any explanation as to the charges which were made and you claimed to be erroneous?

A. I don't recall we ever got any satisfactory answer on that.

Q. Did they ever answer you at all? [551]

A. Well, I think surely there is a lot of correspondence back and forth on that, isn't there? They must have answered us on it. Mr. McFayden—I can state again in a general way, he said if there were errors there, his company was responsible, or words to that effect, the general impression that they would straighten out whatever wasn't right.

Q. Did you write to the accountants after that?

A. The record would have to show on that.

Q. Did you receive an answer from the accountants with reference to those items?

A. The record would have to show on that. The files would show, but I don't recall.

Q. Mr. McFayden didn't state his company would do anything other than what was required by the contract, did he?

(Deposition of Robert E. Wilson.)

A. I would say that was his general answer, that they would live up to the contract.

Mr. Everett: I think that is all.

Redirect Examination

By Mr. McCabe:

Q. Mr. Wilson, any correspondence from the Ohio Oil Company, or letters to the Inland Empire Oil and Gas Syndicate, or letters by you as president of the Inland Oil and Gas Syndicate, have you those in your possession?

A. No, sir, I have none of them.

Q. And when you left the Inland Empire, or when you severed your connection with the Inland Empire Oil and Gas Syndicate, where did you leave that correspondence with reference to the files of that Syndicate?

A. All in the files in the office of the Inland Empire Company.

Q. You didn't take any with you? [552]

A. No, I took nothing with me.

Mr. McCabe: That is all.

Recross-Examination

By Mr. Everett:

Q. Mr. Wilson, will you state for the record your mailing address?

A. The present address is 230 Second Street East.

Q. Kalispell?

(Deposition of Robert E. Wilson.)

A. Kalispell. My permanent address is Brown-ing.

Q. I have here a sheaf of letters and copies which were taken from the files of the Inland Empire Oil and Gas Syndicate in Shelby, which Mr. McCabe has permitted me to use, and I wanted to identify them. They are marked for identification, I presume?

Mr. McCabe: Yes.

Q. I refer to Exhibit 4, which appears to be a copy of a letter dated June 8, 1923, addressed to Lee Yealey, Superintendent of the Ohio Oil Company at Shelby, Montana, and is unsigned but indicates the signature, Inland Empire Oil and Gas Syndicate by line for signature, President and Manager. Did you sign and post the original of that letter, Mr. Wilson?

A. I don't know. That date given there, June 8, 1923, would indicate I did write the letter. I was president of the board of trustees at that time.

Q. Well, it was your custom at that time to keep copies of all letters in the files?

A. Yes, keep a record.

Q. So that if this came from your files, would you say it is a true and correct copy of the original of that letter?

A. We can assume that it would be. [553]

Q. I have here Plaintiff's Exhibit 5, and original letter dated June 20, 1923, addressed to the Inland Empire Oil and Gas Syndicate, Shelby, Montana, on the letterhead of the Ohio Oil Com-

(Deposition of Robert E. Wilson.)

pany, signed by J. P. Hutton. Did you receive that in the due course of the mail at the time you were manager? A. I don't recall.

Q. I have a copy of a letter dated September 11, 1923, addressed to F. E. Hurley, Vice President, Ohio Oil Company, Findlay, Ohio, with reference to the I. H. Baker Lease, marked Plaintiff's Exhibit 6 for identification, and which is signed Inland Empire Oil and Gas Syndicate, by line for signature, President. Did you sign and post in the ordinary course of the mails the original of that letter?

A. I assume that I did with that date on there. I was president of the board of trustees at the time.

Q. And I have a letter marked Plaintiff's Exhibit 7, for identification, addressed to R. E. Wilson, President Inland Empire Oil and Gas Syndicate, dated September 22, 1923, signed by F. E. Hurley, on the Ohio Oil Company letterhead. Did you receive that letter through the mails at that time?

A. I don't recall it. I would assume we did under that date, and it was placed in our files along with all our other records.

Q. Could we make that same assumption to all these records?

A. Yes, if this came from the files of the Inland Empire.

Mr. Everett: That is correct, Mr. McCabe?

Mr. McCabe: Yes.

The Witness: Under those dates I would say I was familiar with [554] them at that time.

(Deposition of Robert E. Wilson.)

Mr. McCabe: And that you wrote them and received them? A. Yes.

Mr. Everett: If he will state that I don't think we further need to identify these letters.

A. It is assumed I did because I was handling it at that time and under those dates.

Mr. Everett: I can just read them here, and if you wish to you stop me. As Plaintiff's Exhibit 8, a copy of a letter of October 3, 1924, addressed Ohio Oil Company, signed Inland Empire Oil and Gas Syndicate, President. Letter, copy of letter, December 1, 1924, Exhibit 9, addressed to J. P. Sutton, Assistant Treasurer, Ohio Oil Company, signed President. Plaintiff's Exhibit 10, on the letterhead of the Ohio Oil Company, addressed to Inland Empire Oil and Gas Company, signed J. P. Sutton. Exhibit 11, copy of letter dated January 30, 1924, addressed F. E. Hurley, Vice President, Ohio Oil Company, Findlay, Ohio, signed Inland Empire Oil and Gas Syndicate, by President. 12, letterhead of the Ohio Oil Company dated March 7, 1924, addressed to Inland Empire Oil and Gas Syndicate and signed W. A. Stephenson.

A. My answer on that was all right was it, Mr. McCabe?

Mr. McCabe: What do you mean, your answer?

A. Well, that I assume under these dates that I had read this correspondence that is in the files there.

Mr. McCabe: Well, I don't know. These letters are from the files of the Inland Empire?

(Deposition of Robert E. Wilson.)

A. I am not swearing I am familiar with all of this, am I?

Mr. McCabe: You haven't read them, have you?

A. No. [555]

Mr. McCabe: Let him read the correspondence.

Mr. Everett: I have no objection to him reading the correspondence if he wants to take that much time.

Mr. McCabe: You were president of the Inland Empire Oil and Gas Syndicate at those times?

The Witness: During the dates these letters are dated, yes.

Mr. McCabe: And there was no one else in the Syndicate that had that title as president?

The Witness: Not while I was there.

Mr. McCabe: And you assume, by reason of the fact that it does appear as president, you would say you sent them out to the addressee?

The Witness: That is it. Here is one January 23, 1925, R. E. Wilson typewritten in.

Mr. Everett: That is the file copy from the Inland Empire files.

Mr. McCabe: But while you were acting as president during the years, Mr. Wilson, then you would be the one that would sign letters sent out under your signature as the president?

The Witness: As president, I would be the one to sign those.

(Recross-examination of Mr. Wilson continued by Mr. Everett:)

(Deposition of Robert E. Wilson.)

Q. And each of these copies is a true and correct copy of what was sent out?

A. Well, we will assume that is right, yes.

Q. Exhibit 13, copy of letter dated January 23, 1925, addressed to the Ohio Oil Company, Findlay, Ohio, R. E. Wilson, President. 14, copy of letter dated January 28, 1925, addressed Ohio Oil Company, Shelby, Montana, signed Inland Empire Oil and Gas Syndicate, President. 15, original letter dated February 9, 1925, on the letterhead of the Ohio Company, addressed to Inland [556] Empire Oil and Gas Syndicate, Shelby, Montana, Attention: Mr. R. E. Wilson, signed L. J. Yealy. Exhibit 16, letter dated January 28, 1925, on letterhead of Ohio Oil Company, addressed Inland Empire Oil and Gas Syndicate, Shelby, Montana, attention Mr. R. E. Wilson, President, signed J. P. Sutton. Exhibit 17, copy of letter dated January 31, 1925, addressed the Ohio Oil Company, signed President.

Mr. McCabe: Does that pertain to Inland Empire Oil and Gas Syndicate business?

Mr. Everett: I presume it does. It comes from their files.

Q. Exhibit 18, copy of letter dated January 28, 1925, addressed Ohio Oil Company, Findlay, Ohio, signed Inland Empire Oil and Gas Syndicate, President. Exhibit 19, copy of letter dated January 28, 1925, addressed Ohio Oil Company, Findlay, Ohio, signed Potlatch Oil and Refining Company, President. I assume you didn't sign that because you were not president of that company?

(Deposition of Robert E. Wilson.)

A. No, that wouldn't go in.

Q. Attached to those two letters are sheets one and two, marked for identification Plaintiff's Exhibit 18A, page 2 and page 1. Exhibit 20, letter on letterhead of Ohio Oil Company dated February 3, 1925, addressed to Inland Empire Oil and Gas Syndicate, Shelby, Montana, Attention: R. E. Wilson, President, signed J. P. Sutton. Exhibit 21, copy of letter dated February 9, 1925, addressed Ohio Oil Company, Findlay, Ohio, signed President, to which is attached sheet referred to as I. H. Baker farm, entitled "Tanks," marked for identification Plaintiff's Exhibit 21A. Will you look at it?

A. It seems to be in line with the others.

Q. Exhibit 22, letter on the letterhead of Ohio Oil Company dated February 17, 1925, addressed to Inland Empire Oil [557] and Gas Syndicate, Shelby, Montana, Attention: R. E. Wilson, President, signed J. P. Sutton, Assistant Treasurer. Exhibit 23, copy of letter dated May 11, 1925, addressed to Ohio Oil Company, Findlay, Ohio, signed Inland Empire Oil and Gas Syndicate, President. Exhibit 24, letter on the letterhead of the Ohio Oil Company dated May 28, 1925, addressed to R. E. Wilson, President, Inland Empire Oil and Gas Syndicate, signed F. A. Billstone.

Mr. McCabe: The Plaintiff now offers as part of the examination of testimony and deposition of R. E. Wilson, the writings identified as follows, concerning which the witness has testified: Plaintiff's Exhibits 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16,

17, 18 and Plaintiff's Exhibit 18A page one and Plaintiff's Exhibit 18A page 2, Exhibits 20, 21, 21A, 22, 23 and 24.

Mr. Everett: Our same objection as previously stated in the record applies to each and all of these exhibits. [558]

Certificate of Notary Public

State of Montana,
County of Flathead—ss.

I, Merritt N. Warden, a Notary Public in and for the State of Montana, do hereby certify that the witness R. E. Wilson, also known as Robert E. Wilson, in the foregoing deposition named, was by me duly sworn upon oath to testify the truth, the whole truth and nothing but the truth in said cause; that said deposition was taken pursuant to stipulation, a duly certified copy of which stipulation is hereunto annexed and hereby referred to, on the 12th day of November, 1947, between the hours of 2 o'clock and 4 o'clock in the afternoon of that day; that one R. L. Robertson, under my direction and control and in my presence, stenographically took and transcribed and reduced to writing in typewritten form and recorded the testimony of said witness, and when completed said deposition was carefully read by said witness and by him stated to be correct and was by him subscribed in my presence; that the deposition is a true record of the testimony given by said witness; that the

certificate of said R. L. Robertson is hereto attached.

I do hereby further certify that all objections made to the evidence presented have been noted upon said Deposition, and, at the time of the taking of said Deposition, no objections were made to the qualifications of the officer taking the deposition nor to the manner of taking it nor to the conduct of any party nor any other objection to the proceedings, excepting objections to the evidence presented, which said objections to evidence have been voted upon the deposition as aforesaid [559]

I do hereby certify that all writings, documents, and exhibits referred to by the witness and offered as a part of his testimony are hereunto annexed and marked, respectively, Plaintiff's Exhibits 4 to 24, inclusive. I do hereby further certify that I am not a relative or employee or attorney or counsel of any of the parties, nor am I a relative or employee of such attorneys or counsel, and I am not financially interested in the said action.

In Witness Whereof, I have hereunto subscribed my name and affixed my official seal as a Notary Public this 6th day of December, 1947.

[Seal] /s/ MERRITT N. WARDEN,
Notary Public for the State of Montana. Residing
at Kalispell, Montana.

My Commission expires January 23, 1949.

[Endorsed]: Filed December 22, 1949. [560]

[Title of District Court and Cause.]

STIPULATION FOR DEPOSITIONS

It Is Hereby Stipulated and Agreed by and between the above-named plaintiffs and defendant, through the undersigned, attorneys of record for said respective parties, as follows, to wit:

1. That the depositions of T. P. Jones, a resident of Bovill, Idaho, and R. E. Wilson, a resident of Kalispell, Montana, may be taken upon oral examination as witnesses on behalf of the Plaintiffs for use as evidence in the above-entitled action, and, in the event the claims of the respective plaintiffs be hereafter ordered severed by the Court, for use as evidence in the actions as severed, the deposition of said T. P. Jones to be taken at Spokane, Washington, before George Stewart, a Notary Public for the State of Washington, at the office of said Notary Public in the Court House, Spokane, Washington, commencing at the hour of 10:00 o'clock in the forenoon on the 14th day of November, A.D. 1947, and continuing until said deposition is completed, and the deposition of said R. E. Wilson to be taken at Kalispell, Montana, before Merritt N. Warden, a Notary Public for the State of Montana, at the office of said Notary Public in Kalispell, Montana, commencing at the hour of 2:00 o'clock in the afternoon on the 12th day of November, A.D. 1947, and continuing until said deposition is completed.

2. It Is Further Stipulated and Agreed that the

right of cross-examination of said witnesses is expressly reserved to the above-named Defendant and all objections as to the relevancy, materiality and competency of the testimony of said T. P. [561] Jones and R. E. Wilson are hereby expressly reserved to said defendant; and when so taken, the said depositions may be used on the trial of said action subject to the same objections (except as to the form of the questions) as if the said witnesses were personally present in court and testifying therein.

Dated this 24th day of October, A.D. 1947.

E. J. McCABE,
Attorney for Plaintiffs.

W. H. EVERETT,
LOUIS P. DONOVAN,
Attorneys for [562]
Defendant.

United States of America,
District of Montana—ss.

I, H. H. Walker, Clerk of the United States District Court in and for the District of Montana, do hereby certify that the annexed and foregoing is a true and full copy of the original Stipulation for Depositions filed in Civil Action No. 956, Potlatch Oil and Refining Company, a corporation, and Jean P. Gerlough, Stanley H. Hodgman, and Roy E. Larson, as trustees of that certain trust known as Inland Empire Oil and Gas Syndicate, a common

law trust, vs. The Ohio Oil Company, a corporation, now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the afore-said Court at Great Falls this 8th day of November, A.D. 1947.

[Seal] H. H. WALKER,
Clerk.

By ELIZABETH C. McKEE,
Deputy Clerk.

[Endorsed]: Filed November 7, 1947. [563]

[Title of District Court and Cause.]

DEPOSITION OF A. M. GEE

Be It Remembered that pursuant to Notice and Interrogatories and Cross-Interrogatories hereto attached, the Deposition of A. M. Gee was taken on behalf of the defendant in the above-entitled action now pending in the United States District Court, for the District of Montana, at the office of Viola Snyder, a Notary Public, in Hancock County Court House, Findlay, Ohio, beginning at 9:30 o'clock a.m., on the 17th day of November, 1948, before Viola Snyder, a Notary Public, whose address is Hancock County Court House, Findlay, Ohio. Said A. M. Gee was first, by me, duly sworn upon oath, and testified as follows:

(Deposition of A. M. Gee.)

Answers to Direct Interrogatories

Answer to Interrogatory No. 1:

A. M. Gee, 539 South Main Street, Findlay,
Ohio.

Answer to Interrogatory No. 2:

Director and General Counsel of The Ohio
Oil Company.

Answer to Interrogatory No. 3:

Yes, sir.

Answer to Interrogatory No. 4: [566]

Since June, 1920.

Answer to Interrogatory No. 5:

Yes, sir.

Answer to Interrogatory No. 6:

Yes, sir.

Answer to Interrogatory No. 7:

(a) I was consulted by certain representatives of The Ohio Oil Company about an agreement that had been negotiated with the Troy-Sweet Grass Oil Syndicate and the Potlatch Oil and Refining Company, and I was requested to prepare myself to draft the operating agreements and assignments of the oil and gas leases involved. The leases involved in the Troy-Sweet Grass contract here in question are described in Exhibit "B" attached to Plaintiff's Complaint. The representatives of The Ohio Oil Company who consulted with me were

(Deposition of A. M. Gee.)

Mr. F. E. Hurley and Mr. A. M. Sellery. Mr. Sellery had already talked with Mr. Jones and Mr. Luke and he then took Mr. Hurley and me to see Mr. Jones and review the matters and discuss them with him. From all these men I learned of the exact terms and conditions of the operating agreement that was to be drawn. I then prepared the instruments for signature of the parties.

(b) F. E. Hurley, A. M. Sellery and T. P. Jones, during the discussions, and Kenneth G. Luke was present, of course, when he signed as Secretary.

(c) The agreement here in question was prepared by me in Shelby, Montana, after our talk with Mr. Jones.

(d) No, sir; no changes were made.

(e) None made.

Answer to Interrogatory No. 8:

Yes, sir.

Answer to Interrogatory No. 9:

(a) In Shelby, Montana.

(b) T. P. Jones, Kenneth G. Luke, F. E. Hurley, A. M. [567] Sellery, and A. M. Gee.

(c) Mr. Sellery had talked to representatives of the Troy-Sweet Grass Oil Syndicate first. He had learned that a deal could be made. Thereafter he reported the matter to Mr. Hurley. I was called in. From Mr. Sellery we heard that a deal could be made with the Troy-

(Deposition of A. M. Gee.)

Sweet Grass. Mr. Sellery had talked over and he had already worked out the terms and conditions of an operating agreement. Mr. Hurley and I went with him to see Mr. Jones. The matter was discussed and reviewed by all of us and agreed to by Mr. Jones and Mr. Hurley. I was then asked to prepare the necessary operating agreement and assignment for execution of the parties. This I did. Mr. Jones signed the operating agreement for the Troy-Sweet Grass as President. He then got Mr. Luke to sign it as Secretary of the Syndicate. Mr. Hurley signed it for the Ohio as Vice-President. Mr. A. M. Sellery signed as a witness for the Troy-Sweet Grass men. We had to send the contract to our General Office at Findlay, Ohio, for the signature of our Secretary, Mr. C. L. Fleming. The only discussions that took place between the parties when I was present before drafting the operating agreement and the assignment of the leases were those that related to the terms and conditions as they now appear in the contract. No objections were made to the contract as written and I was not requested to rewrite it.

Answer to Interrogatory No. 10:

Not in the very beginning, but I was present when the agreement was consummated. But, as I have already stated, the facts were reviewed

(Deposition of A. M. Gee.)

and explained to me in the presence of both sides.

Answer to Interrogatory No. 11:

In Shelby, but I cannot say exactly when and where it was done. It could have been in their office or in ours, or both. Shelby was a comparatively small town and easy to get around in. I am certain that I saw the persons above named in Shelby and heard [568] them discuss and review the terms and conditions of their agreement. I was in Shelby during most of the month of June, 1922. Our Company was then working on other deals with other persons and we were busy making arrangements for drilling on several different properties. The discovery well of Sunburst Oil and Gas Company had just come in and everybody was excited and very busy. I was in and out of Shelby for several months following. My office was in Casper, Wyoming, but I was obliged to and did make frequent trips to Shelby during that summer.

Answer to Interrogatory No. 12:

That is not exactly correct because Mr. A. M. Sellery had already talked with Mr. Jones, then head of the Troy-Sweet Grass Syndicate, and Mr. Luke, Secretary. Mr. Sellery had already worked out the terms and conditions of the operating agreement. He then took Mr. Hurley and me to see Mr. Jones and to get his con-

(Deposition of A. M. Gee.)

firmation of the deal he had reported to Mr. Hurley about. I learned then that the Troy-Sweet Grass and the Ohio were actually willing to make and enter into a contract whereby Troy-Sweet Grass would assign to the Ohio 55% of its interest in and to all of the oil and gas leases that are referred to in Exhibit "B" attached to Plaintiff's Complaint, and that these parties would also make and enter into an operating agreement whereby the Ohio would obligate itself to assume full responsibility for the development and operation of these lands for oil and gas purposes pursuant to these leases; also, that the Ohio would obligate itself to put up all of the money that would be required to develop and operate these lands, and that it would look solely to the proceeds to be derived from any oil and gas that might be produced, saved and marketed therefrom for reimbursement of all advancements made to and for the account of the Troy-Sweet Grass. In addition, it was agreed that the Ohio would put up all the money to drill the first well and drill it free of cost to the Troy-Sweet Grass. All of this was made clear to me by [569] both parties and I was then asked to prepare the assignment and the operating agreement at once. I did so at our office in Shelby. These instruments were presented to Mr. Jones for approval. When they were presented to him, there were no objections made

(Deposition of A. M. Gee.)

to the provisions thereof. He signed them and got Mr. Luke to do likewise as Secretary of the Syndicate.

Answer to Interrogatory No. 13:

No, sir. I know that no one in our meeting with Mr. Jones ever made any such statement as he has made. I was never asked to write nor did I offer to write a contract with a clause therein whereby we would agree to exclude expenses incurred "off the land of the lease." Such a clause would be so indefinite and uncertain as to subject the operator to costs of an unknown amount. Certainly no one at that time could possibly have estimated costs that might be incurred "off the land of the leases" at 10% or any other per centum. If any such conversation had been indulged in, I am certain that I would have remembered it because of its most unusual character. I have no recollection whatsoever of any such demand. The only thing Mr. Jones could have been thinking about in the course of his testimony, in connection with expenses and costs incurred "off the land of the leases," as he puts it, was "overhead cost," which would average about 10%, and I am confident that Mr. Hurley discussed and commented upon that subject, but Mr. Jones offered no objection thereto. In fact, Mr. Jones thought that the amount of overhead, as estimated by Mr. Hurley, was all right. In preparing the contract, if I had been instructed

(Deposition of A. M. Gee.)

to provide that the operating company, the Ohio, would refrain from making a charge against the non-operating company, Troy-Sweet Grass, for all expenses incurred "off the leased premises," it would have been necessary for me to use and I would have used special language to that effect. No such exclusion was agreed upon by virtue of any discussions that I overheard, and from everything that I did hear, [570] I am positive that no such exclusion was ever considered.

Answer to Interrogatory No. 14:

None whatsoever.

Answer to Interrogatory No. 15:

I certainly did not.

Answer to Interrogatory No. 16:

No, sir.

Answer to Interrogatory No. 17:

No, sir.

Answer to Interrogatory No. 18:

No, sir.

Answer to Interrogatory No. 19:

No, sir.

Answer to Interrogatory No. 20:

No, sir; absolutely not. If any such agreement had ever been made, I would not have thought of including in the operating contract the word "operating" as it so frequently appears therein, in connection with the division

(Deposition of A. M. Gee.)

and sharing of the expenses incident to developing and "operating" the leased premises. An operator cannot escape expense in connection with the drilling of wells upon lands, neither can he escape operating expense in connection with the pumping or producing of oil therefrom. These are inescapable development and operation expenses. They are the normal, usual and ordinary expenses, that each one must suffer regardless of who he is. As a lawyer I knew that and I would not have included the "operating" costs if I had heard the principals agree to exclude them.

Answer to Interrogatory No. 21:

No, sir. By that clause it was definitely understood and agreed between these parties that it meant that The Ohio Oil Company, as the operator and the one required to advance all the funds necessary to develop and operate the jointly owned leases, [571] would have to look solely to the oil and gas produced, saved and marketed from the leases themselves for reimbursement for all expenditures made by it, and that under no circumstances would the **Troy-Sweet Grass** ever have to pay **Ohio** anything if the proceeds derived from the production of oil and gas from the jointly owned leases were insufficient. That is all that this clause meant. It was so explained to Mr. Jones and neither Mr. Hurley nor myself told him that under that provision there would be noth-

(Deposition of A. M. Gee.)

ing charged to Troy-Sweet Grass Oil Syndicate after the wells were put into operation, or anything to that effect.

I would like to say that the form of that particular clause was not one dictated or demanded by Mr. Jones. Our Company had made many operating agreements before. In those calling for reimbursement solely from oil produced, saved and marketed from the jointly owned leaseholds, we always wrote the clause in substantially this same language, that is, the same language as used in the Troy-Sweet Grass operating agreement. For example, we wrote this identical clause in an agreement with the Sunburst Oil and Gas Company, which was the company that drilled in the discovery well on June 5, 1922, in the vicinity of the lands here in question. That agreement was signed under date of June 16, 1922, although it had been in the course of negotiation for several days prior thereto. A photographic copy of the original operating agreement is attached hereto as Exhibit "A" to this Deposition.

On September 15, 1920, this defendant, The Ohio Oil Company, made and entered into an operating agreement with Robert M. Birck, of Chicago, whereby and wherein this same covenant was made and the language was the same. For example, the Birck contract says: "* * * but in no case shall the party of the first part be held or charged beyond the value of its

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share or interest in the production or equipment from, in or upon said lands." Mr. F. E. Hurley signed for The Ohio Oil Company. Mr. John McFadyen witnessed the [572] signatures of Mr. Birck and Mr. Hurley. Mr. John McFadyen was the General Manager of The Ohio Oil Company in active charge of all its field operations in the Rocky Mountain region, including Montana. He lived in Casper, Wyoming, although he spent a lot of time in Montana and he supervised the original development of the lands here in question, as well as other lands in the Kevin-Sunburst Field. A photographic copy of the original agreement is attached hereto, as Exhibit "B." The original is available.

We also wrote this identical clause in an operating agreement with the Blackstone Petroleum Company, in Wyoming, under date of September 15, 1921, relative to the development and operation of jointly owned leases in Natrona County, Wyoming, wherein and whereby we also said, among other things, "* * * and in no case shall the party of the second part be finally held or charged beyond the value of its share or interest in the production or equipment from, in or upon said lands."

Other operating contracts and agreements could be cited in substantiation of this point.

Answer to Interrogatory No. 22:

Not to my recollection, but I call attention

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to the fact that Mr. Sellery had done so and he had reported to Mr. Hurley and his associates, including myself, because that was all fully confirmed when we talked to Mr. Jones.

Answer to Interrogatory No. 23:

There were none.

Answer to Interrogatory No. 24:

Yes, sir.

Answer to Interrogatory No. 25:

The Benjamin Building, on or about June 10, 1922.

Answer to Interrogatory No. 26:

Yes, sir.

Answer to Interrogatory No. 27: [573]

He became a Vice-President on May 27, 1918, and a Director on May 23, 1912, and held these offices until his death.

Answer to Interrogatory No. 28:

Dead.

Answer to Interrogatory No. 29:

July 10, 1928, in Findlay, Ohio.

Answer to Interrogatory No. 30:

He had been ill for some time. It was common knowledge to many of us. I visited him at his home in Findlay a few weeks before his death. As an employee in the Company, I naturally heard about his death from com-

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munications between offices. I did not attend his funeral but sent a message of condolence, flowers, read newspaper articles about him and resolutions by the Board of Directors, visited his widow in his home thereafter, and knew all about it in a very general way.

Answer to Interrogatory No. 31:

Yes, sir.

Answer to Interrogatory No. 32:

A leaser connected with the Land Department of the Casper Division Office, which had charge of the acquisition of lands for oil and gas purposes in the entire Rocky Mountain region, including Montana. He came with our Company prior to 1920 and remained with it in that capacity until his death.

Answer to Interrogatory No. 33:

Dead.

Answer to Interrogatory No. 34:

He died in El Paso, Texas, in February, 1927.

Answer to Interrogatory No. 35:

I personally attended his funeral.

Answer to Interrogatory No. 36:

Yes, sir. [574]

Answer to Interrogatory No. 37:

General Manager of the Casper Division, which covered all oil and gas operations of The

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Ohio Oil Company in the Rocky Mountain region, including the State of Montana. This position he held from 1912 until his retirement June 1, 1941. In addition he became a Director of the Company on May 28, 1925, and held that position until he retired.

Answer to Interrogatory No. 38:

Dead.

Answer to Interrogatory No. 39:

He died in Los Angeles, California, April 26, 1943.

Answer to Interrogatory No. 40:

I was living here at the time of his death and our office received word from his home and also from members of our Los Angeles office about his death. I afterwards visited his widow in his home and saw news dispatches about his death.

Answer to Interrogatory No. 41:

Yes, sir.

Answer to Interrogatory No. 42:

He was then Cashier of the Casper Division, which covered all the Company's operations in the Rocky Mountain area, including Montana. As such he was responsible for the accounting procedure relative to all Company operations in his division. He went to Wyoming in December, 1919, as Cashier, and held that position until he left there in February, 1927.

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Answer to Interrogatory No. 43:

Dead.

Answer to Interrogatory No. 44:

June 23, 1942, at Findlay, Ohio.

Answer to Interrogatory No. 45:

It just happens that I was with him the night he had a heart attack and I saw him pass away.

I attended his funeral. [575]

Answers to Cross-Interrogatories:

Answer to Cross-Interrogatory No. 1:

(a) Director of The Ohio Oil Company.

(b) Casper, Wyoming, from June, 1920, to October, 1927; Tulsa, Oklahoma, from October, 1927, to July, 1932; and Findlay, Ohio, from July, 1932, to present date.

(c) All of my time within the above dates.

(d) At Casper I was General Attorney for the corporation. In Tulsa I was General Counsel for the Mid-Kansas Oil and Gas Company, a wholly-owned subsidiary, which later changed its name to Marathon Oil Company. I was also for a time Vice-President and Director of that subsidiary. I came to Findlay as General Counsel for The Ohio Oil Company and have been a Director since 1941.

Answer to Cross-Interrogatory No. 2:

(a) F. E. Hurley and A. M. Sellery, with the consent and approval of T. P. Jones.

(Deposition of A. M. Gee.)

(b) F. E. Hurley was a Vice-President of The Ohio Oil Company and also a Director. He was responsible to the officers and other Directors of the corporation for the general supervision and direction of all oil and gas business being conducted in the Rocky Mountain area. Hence, he was obliged to and did spend a great deal of time there and worked with all members of his organization. A. M. Sellery was one of several men employed to obtain leases and contracts for the company in connection with the general oil and gas business. His official residence was then at Casper, Wyoming, although at the time this contract was made and for some time thereafter he spent a considerable amount of his time in Shelby, Montana.

(c) Yes, sir.

Answer to Cross-Interrogatory No. 3:

(a) F. E. Hurley, A. M. Sellery, T. P. Jones, and Kenneth G. Luke. [576]

(b) Their positions are given fully in my answer to Cross-Interrogatory No. 2 (b).

Answer to Cross-Interrogatory No. 4:

(a) No, sir. However, it is my best recollection that I talked with some member of the law firm of Freeman, Thelen and Frary, of Great Falls, about a dispute that arose in 1925 over the interpretation of our operating agreement because under date of August 5, 1925, J. W. Freeman wrote our Mr. F. B. Firmin a

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letter, in which he outlined several points of dispute. Mr. Firmin was our Cashier at Casper, Wyoming, and as such he had supervision of the Company's accounting in the Rocky Mountain area. He was familiar with our operations in the Kevin-Sunburst Field. I conferred with Mr. Firmin about the disputes and assisted him in the preparation of a letter that he wrote the law firm, dated September 12, 1925. No claim was made then that we had no right to charge our joint interest owner with costs incurred "off the land itself," or that we had no right to charge them for the cost of operating the wells after they had been equipped and put on production. They were then disputing the expenses incurred by us for the construction or operation of a water plant; that we had no right to charge 10% overhead; or no right to charge any field auto expense; or to charge any part of the construction cost of a field camp used to develop and operate their leases along with other leases. They also contended that our drilling costs were too high; that we should have included in our accounting covering the price received for oil sold, a premium that was being offered in the field by some purchaser. It was my understanding that these matters were explained to the satisfaction of the law firm and the company officials. At least, I do not recall having heard anything more about it. Mr. Firmin conferred with Mr. Hurley about

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these matters. Mr. Hurley consulted with me about them. [577]

Answer to Cross-Interrogatory No. 5:

No, sir. It was not my understanding of the provision referred to in this question that there would be a final accounting held between the Ohio and the other party to the agreement for the purpose of finally determining the items of expense in connection with the performance of the contract. Our operating agreement expressly called for the rendition of monthly statements and it was definitely understood between the parties when the agreement was made that the accounting was to be on a monthly basis and to follow the ordinary rules of accounting and of accounts stated, so that each party could tell at the end of each month the amount of the credit or debit balance that existed. If a credit balance was shown, we were expected to pay them their share of the net profits; if a debit balance, we were expected to carry it forward and rely upon future revenue to cover the same.

/s/ A. M. GEE.

State of Ohio,

County of Hancock—ss.

I, Viola Snyder, a Notary Public in and for Hancock County, State of Ohio, Do Hereby Certify:
That the witness, A. M. Gee, in the foregoing

deposition named, was, by me, duly sworn upon oath to testify the truth, the whole truth, and nothing but the truth, in said cause; that said Deposition was taken pursuant to Notice thereof, a copy of which is hereto attached, and the Direct Interrogatories and Cross-Interrogatories submitted by respective parties and hereto attached, on the 17th day of November, 1948, before me, a Notary Public, at my office in Hancock County Court House, Findlay, Ohio; that I stenographically took and transcribed and reduced to writing in [578] typewritten form and recorded the testimony of said witness, and when completed, said deposition was carefully read by said witness and by him stated to be correct and was by him subscribed in my presence.

I Do Further Certify that all objections made to the evidence presented have been noted upon said Deposition, and, at the time of taking said Deposition, no objections were made to the qualifications of the officer taking the Deposition, nor to the manner of taking it, nor to the conduct of any party, nor any other objection to the proceedings, except objections to the evidence presented, which said objections to evidence have been noted upon the Deposition, as aforesaid.

I Do Further Certify that all writing, documents and exhibits referred to by the witness and offered as a part of his testimony in response to the Interrogatories or Cross-Interrogatories, are hereto annexed and marked Exhibits "A" and "B."

I Do Further Certify that I am not a relative or employee or attorney or counsel of any of the par-

ties, nor am I a relative or employee of such attorneys or counsel, and I am not financially interested in said action, and that the said Deposition is a true record of the testimony given by the said witness, A. M. Gee.

In Witness Whereof, I have hereunto subscribed my name and affixed my official seal as a Notary Public this 17th day of November, A. D. 1948.

[Seal] /s/ VIOLA M. SNYDER,
Notary Public for Hancock County, Ohio, Residing
at Findlay, Ohio.

My commission expires February 1, 1949. [579]

EXHIBIT A

Operating Agreement

This Agreement, made and entered into this sixteenth day of June, A.D. 1922, by and between The Sunburst Oil and Gas Company, a Montana corporation, hereinafter called the party of the first part, and The Ohio Oil Company, an Ohio corporation, of Findlay, Ohio, hereinafter called the party of the second part,

Witnesseth:

That, Whereas, the said party of the first part in pursuance of a prior verbal agreement did on this date sell, assign, transfer and convey unto the said party of the second part, its successors and assigns, an undivided fifty (50%) per centum interest in and to certain oil and gas leases covering the following described premises, to wit:

East half ($E\frac{1}{2}$) of Section three (3) and North half ($N\frac{1}{2}$) of Section two (2), situate in Township thirty-five (35) north, Range two (2) west, M.M., and the Southeast quarter of the Southwest quarter ($SE\frac{1}{4}SW\frac{1}{4}$) and Southwest quarter of Southeast quarter ($SW\frac{1}{4}SE\frac{1}{4}$) of Section twenty-seven (27) and all of Section thirty-four (34) and West half ($W\frac{1}{2}$) and West half of East half ($W\frac{1}{2}E\frac{1}{2}$) of Section thirty-five (35), being situate in Township thirty-six (36) north, Range two (2) west, M.M., and all of said lands situate in Toole County, State of Montana, containing eighteen hundred and forty (1840) acres, more or less, and,

Whereas, the party of the first part is desirous of having the party of the second part develop and operate said premises for oil and gas purposes, and,

Whereas, the parties hereto desire to reduce to writing the terms and conditions of their understanding or agreement,

Now, Therefore, in consideration of the premises and of One Dollar by each of the parties hereto to the other in hand paid, the receipt of which is hereby acknowledged, and of the covenants and stipulations hereinafter contained, to be duly kept, paid and performed by the parties hereto, it is hereby mutually agreed:

I. The party of the second part shall have the control and management of the said lands and leases

and of the development and operation thereof for oil and gas purposes, including the marketing of the oil and gas produced.

II. As a part consideration for the assignment hereinabove mentioned, the party of the second part agrees that it will commence the drilling of a well at once, upon the above described lands and at such location as shall be selected by the party of the second part, and will continue said work in a diligent and workmanlike manner to such a depth as shall be deemed an adequate test of the oil and gas content of the first commercial oil sand underlying said structure and in compliance with the terms and conditions of the leases of the party of the first part.

III. In the event that the well described in paragraph two herein above shall prove a commercial well, the party of the second part shall continue the work of developing and operating said premises in as diligent a manner as field and market conditions warrant and is consistent with good business management. It will pay all costs and expenses of developing and operating said lands for oil and gas purposes, as herein provided, and shall charge the said party of the first part fifty (50%) per centum thereof. Second party shall market all oil and gas produced upon said land and account to the party of the first part for the undivided fifty (50%) per centum of the proceeds thereof at the prevailing market price at the wells for said oil and gas after deducting all royalty oil and gas or the proceeds thereof, it being hereby understood and agreed that

all leases covering the lands herein described carry one-eighth ($\frac{1}{8}$) royalty to the lessor or lessors. The said party of the second part shall be reimbursed by the said party of the first part solely from the first party's proportion of the oil and gas produced and sold from said land. Application of proceeds derived from sale of said oil and gas will be [580] made to the credit of the first party's account upon the first day of the month following that in which said oil and gas is sold, but in no case shall said party of the first part be finally held or charged beyond its share or interest in the production and equipment from, in or upon said lands. The party of the second part shall be entitled to and shall charge the party of the first part eight (8%) per centum interest upon all moneys so advanced for the development and operations upon said land for the account of the interest of the first party until the same shall have been paid out of the proceeds of the party of first part's proportion of the oil and gas produced and sold as herein provided, said interest payments to be also paid out of production provided however that the party of the first part shall always have the right to advance its proportion of the development and operation costs and expenses and thereby avoid said interest charges.

IV. The party of the second part hereby agrees to render the party of the first part monthly statements showing the actual cost and expenses of developing and operating said lands and leases and will remit monthly to the party of the first part all proceeds of the oil and gas sold from the interest

of the first party over and above the amount necessary to reimburse the party of the second part for expenditures made by it for the account and interest of the party of the first part.

V. The party of the first part through its duly authorized agents or representatives shall at all times have access to the buildings, lands and property hereinabove described for the purpose of examining the operations thereon and the production therefrom, and at all reasonable times during business hours shall have the right to examine the books and records of the party of the second part insofar as they pertain to the operations conducted under this agreement.

VI. The party of the first part hereby gives and grants unto the party of the second part upon the considerations aforesaid the first right and option to purchase the interest of the first party in the lands and leases above described under and by virtue of the terms of this agreement should the first party at any time desire to dispose of its said interest, and the party of the second part grants unto the party of the first part a like option, should it desire to dispose of its interest.

VII. The party of the second part shall fully comply with all the terms and provisions contained in the leases hereinabove described unless and until surrendered unto the party of the first part, but shall have the right however, upon the payment of One Dollar to the party of the first part, to surrender the whole or any part of the above described

leases and lands embraced and included therein, and shall thereafter be relieved by said party of the first part from any further liability as to any such lands surrendered.

The terms and conditions of this agreement shall extend to and be binding upon the heirs, administrators, successors and assigns of the parties hereto.

In Witness Whereof, the parties hereto have caused this instrument to be executed the day and year first above written.

[Seal] THE SUNBURST OIL AND
 GAS COMPANY,

By /s/ C. R. STEVENSON,
 President.

Attest:

/s/ WM. GEO. DAVIS,
 Secretary,

Party of the First Part.

Witness:

/s/ A. M. GEE.

[Seal] THE OHIO OIL COMPANY,

By /s/ F. E. HURLEY,
 Vice President,

Party of the Second Part.

Attest:

/s/ C. L. FLEMING,
Secretary.

Witness:

/s/ A. M. GEE,

/s/ PEARL WILLIAMSON. [581]

EXHIBIT B

Agreement

Memorandum of Agreement, Made and entered into this 15th day of September, A.D. 1920, by and between Robert M. Birck of Chicago, Illinois, party of the first part, and The Ohio Oil Company, a corporation of Findlay, Ohio, party of the second part, Witnesseth:

For That Whereas, the party of the first part is the owner of a lease upon the North Half of the Northwest Quarter ($N\frac{1}{2}NW\frac{1}{4}$) of Section 24, Township 10 North, Range 26 East of the Montana Principal Meridian, in the County of Musselshell and State of Montana, which lease is subject to a five percent (5%) net royalty to Frank Liess; and,

Whereas, the party of the first part has taken an option to purchase in fee the Northwest Quarter of the Northeast Quarter ($NW\frac{1}{4}NE\frac{1}{4}$) of Section 24, Township 10 North, Range 26 East of the Montana Principal Meridian, in the County of Musselshell and State of Montana; and,

Whereas, the said first party proposes to close his option on the said premises and then make a lease to The Ohio Oil Company at one-eighth ($\frac{1}{8}$)

royalty, reserving to himself, however, a twenty-five percent (25%) working interest in and to the same, which said lease is to be operated under the terms and conditions hereinafter set forth;

Now, Therefore, the party of the first part, for and in consideration of the sum of One Dollar (\$1.00) to him in hand paid by the party of the second part, receipt of which is hereby acknowledged, and of the covenants and agreements hereinafter set forth, agrees to assign, and does hereby assign unto the said party of the second part an undivided seventy-five percent (75%) interest in and to the two above described leases, and agrees to have the same operated under the following terms and conditions, to wit:

First: The party of the first part agrees that the party of the second part shall have the complete management and control of all of said property aforesaid, as well as the sale of the oil therefrom.

Second: It is understood by and between the parties hereto that the party of the first part has a contract with the Victory Oil Company, a Montana corporation, whereby he shall pay the said Victory Oil Company five percent (5%) royalty in the Northwest Quarter of the Northeast Quarter of Section 24, Township 10 North, Range 26 East of the Montana Principal Meridian, provided the first well on the Big Wall Structure is drilled on this said forty (40) acres. In case said first well is drilled on the forty (40) acres described, then the party of the second part assumes and agrees to pay to the aforesaid Victory Oil Company the said five

percent (5%) royalty, which said first party has obligated himself to pay.

Third: The party of the second part agrees to furnish unto the party of the first part a monthly statement covering all investment and expense, of operating said property, together with a monthly statement of the amount of the production of oil and gas from said premises.

Fourth: The party of the second part agrees that a well shall be commenced upon said structure of which the above described lands are a part at some point to be selected and designated by it within sixty (60) days from the date hereof, and the drilling of the same to continue with all due diligence.

Fifth: In the event that the above described well, when completed, shall be a commercial oil well, the party of the second part agrees to diligently continue the work of developing and operating said lands for oil and gas purposes as fully and as rapidly as is consistent with good business management.

Sixth: The party of the second part will pay all expenses and costs [582] of developing and operating said lands for oil and gas purposes as herein provided and shall charge said party of the first part with twenty-five percent (25%) thereof. Said party of the second part shall market all of the oil and gas produced from said lands and account to the party of the first part for the undivided twenty-five percent (25%) of the proceeds thereof at the prevailing market price at the wells for said oil and gas, after deducting all royalty oil and gas or the proceeds thereof. The said party of the second part

shall be reimbursed by the said party of the first part from the first party's proportion of the oil and gas produced and sold from said lands. Application from the proceeds from sales of said oil and gas will be made to the credit of the first party's account on the first day of the month following that in which said oil and gas is sold, but in no case shall the party of the first part be finally held or charged beyond the value of its share or interest in the production and equipment from, in and upon said lands. The party of the second part shall charge the party of the first part eight percent (8%) interest on all moneys so advanced for the development and operation of said lands for the account of the interest of the party of the first part, until the same shall have been paid out of the proceeds of the first party's proportion of the oil and gas produced and sold as herein provided.

This agreement shall extend to and be binding upon the respective parties hereto and their successors, administrators and assigns.

In Witness Whereof, the parties hereto have caused this instrument to be executed the day and year first hereinabove written.

/s/ ROBT. M. BIRCK.

Witness:

/s/ JNO. McFADYEN.

THE OHIO OIL COMPANY,

By /s/ F. E. HURLEY,

Vice-President.

Witness:

/s/ JNO. McFADYEN. [583]

[Title of District Court and Cause.]

NOTICE OF TAKING DEPOSITION ON
WRITTEN INTERROGATORIES

To E. J. McCabe, Attorney for Plaintiffs, Montana
Power Building, Great Falls, Montana.

Please Take Notice that the attached Interrogatories will be propounded on defendant's behalf to A. M. Gee, whose address is c/o The Ohio Oil Company, Findlay, Ohio, at the taking of his Deposition before Viola Snyder, a Notary Public, whose address is Hancock County Court House, Findlay, Ohio.

Any Cross-Interrogatories or objections must be served upon defendant within ten (10) days from date of service of this Notice.

Dated at Shelby, Montana, this 16th day of October, A.D. 1948.

/s/ W. H. EVERETT,

/s/ LOUIS P. DONOVAN,

Attorneys for Defendant.

[Title of District Court and Cause.]

INTERROGATORIES TO BE PROPOUNDED
ON DEFENDANT'S BEHALF TO A. M.
GEE,

Whose Address Is c/o The Ohio Oil Company, at
Findlay, Ohio, by Viola Snyder, Notary Public,
Whose Address Is Hancock County Court House,
Findlay, Ohio.

1. State your name and address.
2. What is your occupation or profession?
3. Are you employed by The Ohio Oil Company,
defendant herein, as one of its attorneys at the
present time?
4. How long have you been so employed?
5. Were you employed by The Ohio Oil Com-
pany as an attorney at law in the month of June,
1922?
6. There is attached to the Complaint in this
action and marked Exhibit "A" thereof, a copy of
an Operating Agreement made and entered into the
15th day of June, 1922, by and between Troy Sweet
Grass Oil Syndicate, a common law trust, of Shelby,
Montana, as first party, and The Ohio Oil Company,
a corporation, of Findlay, Ohio, as party of the sec-
ond part. Please state whether you had anything
to do with the preparation of the [585] Operating
Agreement referred to, or the execution of same by
the parties thereto.
7. If you answer the foregoing question in the
affirmative, please state fully what connection you
had with:

(a) The preparation of the said Operating Agreement.

(b) What other persons were present.

(c) Where the agreement was prepared.

(d) Whether, after same was first prepared, any changes were made therein at the instance of any of the parties thereto.

(e) If you state that a change or changes were made in the language of the operating agreement after it was first prepared, state at whose instance the change was made and state fully what was said in regard to same, and by whom the request or statements were made.

8. Were you personally present when the agreement was executed by the respective parties thereto?

9. If you answer the foregoing question in the affirmative, please state:

(a) Where the agreement was executed.

(b) Who was present.

(c) Any explanations or discussions between the parties, or their representatives, in regard to the terms of the Operating Agreement or the interpretation of the language thereof, and give the substances of the discussion.

10. Were you present when the terms of the Operating Agreement were negotiated and discussed by the parties thereto?

11. If there was any such negotiation or discussion, please state where the same took place and the date and hour that same took place, and [586] the substance of what was said.

12. There is on file in this case a Deposition given by Mr. T. P. Jones, in which Mr. Jones testified that Mr. Hurley and Mr. Gee came to the office of Troy Sweet Grass Oil Syndicate, in Shelby, Montana, on the morning of June 15, 1922, and asked him if he could and would make an Operating Agreement on some land held by Mr. Jones' Company (page 12, Jones Deposition). Please state if the foregoing statement by Mr. Jones is correct, and if not correct, please make a full statement of the transaction that actually occurred.

13. Mr. Jones testified further (page 13, Jones Deposition): "I told them that I would enter into an agreement with them but not where any expenses would be charged to this land off of the lease, of Findlay, Ohio, or any place else, off of that lease, and so then after a conversation quite a while Mr. Hurley, or one of them, spoke up and said, well the charges wouldn't be in excess of probably ten per cent, and I told them 'all right, gentlemen, if that is all it will be, I will give you 45% and you can take 55%, and you can pay the expenses and put that into a lease and we can make an agreement,' and Mr. Gee said he would write up that kind of an agreement. I said 'There is a typewriter here and paper.' He said 'I have a typewriter right over here and I will go over and write it,' which he did, and when he came back, he had an operating agreement written up in duplicate. I think it was triplicate."

Please state whether any such conversation took place in your presence.

14. After the proposed form of Operating Agreement was prepared and submitted to Mr. T. P. Jones, did he make any objection to the language of it, and if so, what objection did he make?

15. Did you at that time and place say to Mr. Jones, "I will go and rewrite it and include it in there," meaning a provision to the effect [587] that The Ohio Oil Company would pay all of the expenses outside the boundaries of the lease, or anything to that effect?

16. Did you thereafter go and rewrite the Operating Agreement and return again with the Operating Agreement, as rewritten?

17. Did you on your return with the Operating Agreement, as rewritten, point out to Mr. Jones a certain paragraph and say to him that that paragraph covered the objections that he had, and that there would be no charges against the Troy Sweet Grass Oil Syndicate except what was done on their ground? (Jones Deposition, p. 19.)

18. Was any such statement made by Mr. F. E. Hurley or by any other representative of The Ohio Oil Company in your presence?

19. Did you or any other representative of The Ohio Oil Company at or before the Operating Agreement dated June 15, 1922, and a copy of which is attached to the Complaint herein, was executed, state or represent to Mr. T. P. Jones that under the terms of the agreement only expenses incurred on the lease in the drilling of wells and putting them into production, would be charged against Troy Sweet Grass Oil Syndicate and that there

would be no part of the expenses charged against Troy Sweet Grass Oil Syndicate after the wells were drilled and put into production? (Jones Deposition, pp. 51-52.)

20. Did you or any other representative of The Ohio Oil Company state to Mr. Jones in connection with the Operating Agreement above mentioned, that no part of the cost of operation, pumping the wells, would be charged to Troy Sweet Grass Oil Company or its successors? (Jones Deposition, pp. 52-54.) [588]

21. Your attention is called to the following provision in paragraph III of the Operating Agreement, to wit:

“But in no case shall said party of the first part be finally held or charged beyond its share or interest in the production and equipment from, in or upon said lands”;

Did you or Mr. Hurley, in your presence, point out the above provision to Mr. Jones and say to him that under the above provision there would be nothing charged to Troy Sweet Grass Oil Syndicate after the wells were put into operation (Jones Deposition, p. 54), or anything to that effect?

22. Had you or Mr. Hurley, in your presence, discussed with Mr. T. P. Jones the terms of the proposed Operating Agreement at any time previous to June 15, 1922 (the date on which it was executed)?

23. If you answer the foregoing question in the affirmative, state when the discussions took place,

and where the discussions took place, and who was present.

24. Did The Ohio Oil Company have an office in Shelby, Montana, on June 15, 1922?

25. If you answer the foregoing question in the affirmative, please state where the office was located, and about the date that it was opened.

26. Were you personally acquainted with Mr. F. E. Hurley in his lifetime?

27. State what office, if any, Mr. F. E. Hurley held with The Ohio Oil Company in June, 1922, and approximately how long he held such office.

28. State whether Mr. F. E. Hurley is living or dead at the present date.

29. If you state that Mr. Hurley is deceased at the present date, state if you can, the time and place of his death. [589]

30. State fully how, or in what manner, you became acquainted with the fact as to the time and place of Mr. F. E. Hurley's death.

31. Did you know A. M. Sellery in his lifetime?

32. If you answer the foregoing question in the affirmative, state what position, if any, A. M. Sellery held with The Ohio Oil Company in June, 1922, and approximately how long he held such office.

33. State whether Mr. A. M. Sellery is living or dead at the present date.

34. If you state that Mr. Sellery is deceased at the present date, state if you can, the time and place of his death.

35. State fully how, or in what manner, you be-

came acquainted with the fact as to the time and place of Mr. A. M. Sellery's death.

36. Did you know Mr. John McFadyen in his lifetime?

37. If you answer the foregoing question in the affirmative, state what position, if any, John McFadyen held with The Ohio Oil Company in June, 1922, and approximately how long he held such office.

38. State whether Mr. John McFadyen is living or dead at the present date.

39. If you state that Mr. McFadyen is deceased at the present date, state if you can, the time and place of his death.

40. State fully how, or in what manner, you became acquainted with the fact as to the time and place of Mr. John McFadyen's death. [590]

41. Did you know Mr. F. B. Firmin in his lifetime?

42. If you answer the foregoing question in the affirmative, state what position, if any, F. B. Firmin held with The Ohio Oil Company in June, 1922, and approximately how long he held such office.

43. State whether Mr. F. B. Firmin is living or dead at the present date.

44. If you state that Mr. Firmin is deceased at the present date, state if you can, the time and place of his death.

45. State fully how, or in what manner, you became acquainted with the fact as to the time and place of Mr. F. B. Firmin's death.

Dated at Shelby, Montana, this 16th day of October, A.D. 1948.

/s/ W. H. EVERETT,

/s/ LOUIS P. DONOVAN,
Attorneys for Defendant.

[Title of District Court and Cause.]

CROSS-INTERROGATORIES TO BE PRO-
POUNDED ON PLAINTIFFS' BEHALF
TO A. M. GEE,

Whose Address Is c/o The Ohio Oil Company, at Findlay, Ohio, by Viola Snyder, Notary Public, Whose Address Is Hancock County Court House, Findlay, Ohio.

1. If you answer defendant's direct interrogatories numbers 3 and 4 substantially to the effect that you are employed as one of the attorneys for the Ohio Oil Company at the present time, and state the length of time that you have been so employed, please state:

a. In what other capacities besides that of attorney you have been employed by the Ohio Oil Company.

b. The names of the cities and towns where you have been located during the period of your employment.

c. The approximate period of time spent in your employment in the various places.

d. The general nature and character of your employment and duties while employed in the

various cities and towns in which you were located during the term of your employment.

2. If you answer defendant's direct interrogatory number 6 in the affirmative, please state:

a. The name or names of the person or persons who requested you to become connected with the preparation or execution of the Operating Agreement.

b. The office or position held by such person or persons with the Ohio Oil Company at the time.

c. If you were acting as attorney for the Ohio Oil Company at the time. [593]

3. If you answer defendant's direct interrogatory number 7 substantially, among other things, to the effect that other persons were present, please state:

a. The name or names of the person or persons present.

b. What position or positions with the Ohio Oil Company were held, at the time, by such persons, respectively.

4. If you answer defendant's direct interrogatory number 9 substantially, among other things, to the effect that there were explanations or discussions in regard to the terms of the Operating Agreement or the interpretation of the language thereof, please state:

a. Whether, subsequent to the execution of the Operating Agreement, you ever discussed with any person or persons the substance of

the explanations or discussions in regard to the terms of the Operating Agreement or the interpretation of the language thereof, and if you answer that you did have such discussions, state the approximate dates, the names of the city or town in which you had any such discussion, and the names of the persons with whom any discussion was had, and if such person or persons were connected with the Ohio Oil Company in an official position or employed by said company, please state the official position held and the capacity in which such person was employed.

5. In defendant's direct interrogatory number 21, your attention has been directed to a quoted provision from paragraph III of the Operating Agreement. State whether or not, at the time this provision was inserted in the Operating Agreement it was your understanding of the provision that there would be a final accounting held between the Ohio Oil Company and the other party to the Operating Agreement for the purpose of finally determining the items of expense connected with the performance of the Operating Agreement by the Ohio Oil Company that was to be finally charged against the [594] Party of the First Part or against the Troy-Sweet Grass Oil Syndicate and you are requested to answer this interrogatory yes or no.

Dated this 28th day of October, 1948.

E. J. McCABE,

Attorney for Plaintiffs.

[Endorsed]: Filed December 23, 1949. [595]

[Title of District Court and Cause.]

DEPOSITION OF KENNETH G. LUKE

Be it remembered that pursuant to stipulation of the above-named plaintiffs and defendant, a duly certified copy of which stipulation is hereunto annexed, and on the 18th day of June, 1948, at Spokane, State of Washington, before me George Stewart, a Notary Public in and for the State of Washington, duly appeared Kenneth G. Luke, a witness produced on behalf of the defendant in the above-entitled action now pending in the above-entitled court, who, being first by me duly sworn, was then and there examined and interrogated by Louis P. Donovan, of counsel for the defendant, the plaintiffs being represented by their attorney, E. J. McCabe, and testified as follows: [598]

KENNETH G. LUKE

being first duly sworn to tell the truth, the whole truth and nothing but the truth in the above-entitled cause, was examined on behalf of the Defendant, and testified as follows:

Direct Examination

By Mr. Donovan:

Q. Will you state your name.

A. Kenneth G. Luke.

Q. And how old are you, Mr. Luke?

A. Sixty-four.

Q. And your present occupation and residence?

A. My residence is 514 First Avenue, West. My

(Deposition of Kenneth G. Luke.)

occupation is, I think I will say a public accountant.

Q. You gave the street number. That is Spokane, Washington?

A. Yes, Ridpath Hotel, Spokane, Washington.

Q. And how long have you lived in Spokane, Mr. Luke?

A. I have lived at the Ridpath Hotel for twenty years or better.

Q. That is enough. Prior to coming to Spokane, did you live in Montana? A. I did.

Q. And where were you living in 1921 and '22?

A. I was in Shelby myself most of the time. I think my family were in Kalispell in—I don't know when I moved here; I think it was '21 or '22. Anyway, I lived in Kalispell for a time before coming here.

Q. For the purpose of fixing the time, the Campbell discovery well was drilled in, I believe, March, 1922. Campbell had been drilling it for practically a year prior [599] to that, I believe.

A. Well, I think I could say that personally I was living at the Rainbow Hotel in Shelby. I think perhaps I wasn't at the Rainbow Hotel at that time because I think I helped Tom start that hotel after that. I was in Shelby, Montana.

Q. And attached to the complaint in this action as an exhibit is a copy of an operating agreement dated June 15, 1922, between Troy-Sweet Grass Oil Syndicate of Shelby, Montana, as party of the first part, and Ohio Oil Company as party of the

(Deposition of Kenneth G. Luke.)

second part, and that appears to be executed on behalf of the Troy-Sweet Grass Oil Syndicate by T. P. Jones, President, and Kenneth G. Luke, Secretary. Are you the Kenneth G. Luke, Secretary of Troy-Sweet Grass? A. I am.

Q. In 1922? A. I am.

Q. And you were acquainted with T. P. Jones?

A. I was.

Q. Do you recall the time and place of the execution of this operating agreement that I have just referred to?

A. On my part? The execution on my part?

Q. Yes. Well, the execution of all of the parties if you saw it executed by the other parties?

A. I don't think I saw it executed by the other parties. I think they had already signed the papers when they came to me for signature, and it was in the office of the Troy-Sweet Grass Oil Syndicate, which had been my former office, preceding the organization of that syndicate, [600] over the First National Bank Building on the north side of the tracks in Shelby, Montana. As I remember it, it was in the forenoon.

Q. On the date that the instrument bears?

A. I would say so.

Q. Do you recall the representatives or officers of the Ohio Oil Company who signed that instrument?

A. I do. Mr. Hurley of Findlay, Ohio, and Mr. Sellery.

Q. Art Sellery? A. Yes.

(Deposition of Kenneth G. Luke.)

Q. Were you acquainted with either of these gentlemen prior to the date of the execution of this operating agreement?

A. I knew Mr. Sellery, I believe. I think I had met him previous to that. I don't remember if I knew Mr. Hurley or not.

Q. Do you recall who prepared the operating agreement or anything about that part of the transaction? A. I do not.

Q. Well, how did it come to you, Mr. Luke?

A. As I remember it, Mr. Hurley and Mr. Jones and Mr. Sellery came to the office over the First National Bank Building in Shelby and laid the agreement before me and asked me to sign it as Secretary and attach the seal of the syndicate to the agreement.

Q. Do you recall whether they came there together?

A. I think they did. I think they all came up together. It was upstairs.

Q. And are we to understand that the papers were all prepared at that time?

A. As I remember it, they were all prepared and they just [601] simply came up there and asked me to sign.

Q. And was there any discussion in your presence about the terms under discussion, either between you and the representatives of the Ohio Oil Company or between Mr. T. P. Jones and the representatives of the Ohio Oil Company?

(Deposition of Kenneth G. Luke.)

A. Not there, no. I don't think so. I don't remember any such.

Q. Did you examine the operating agreement yourself?

A. Well, I think I just glanced over it. They were in a hurry, and as I remember, Mr. Jones told me that it was fully understood and that it was all right, "Go ahead and sign it and put the seal on it."

Q. Before you got through reading it?

A. Yes, before I had read it through. In fact, I don't know as I read it very thoroughly at the time.

Q. Well, it is a document I think of about three pages.

A. I have seen it since.

Q. And about how long after those gentlemen came to the office was it when the execution was completed by signatures of all the parties?

A. Oh, I would say within—As I remember it, it was all signed by them, and it took not over ten minutes for me to sign it and attach the seal of the syndicate. I don't think they signed it in my presence. I don't remember that. I think they had signed it.

Q. And this took place at the office of the Troy-Sweet Grass Oil Company?

A. That is right.

Q. Was that on the second floor of the First National Bank Building? [602]

A. That is right.

Q. Or the building usually called the First National Bank in Shelby, Montana?

(Deposition of Kenneth G. Luke.)

A. That is right.

Q. And that is on the north side of the Great Northern tracks? A. That is right.

Q. Have you been connected with the Troy-Sweet Grass Oil Syndicate for some time?

A. I had been one of the three organizers of it.

Q. And were you also actively connected with its business affairs, too?

A. I had been very active in the business affairs of it up until the time that Mr. Jones came into the picture. Probably I drew the trust agreement myself. Mr. I. W. Hansen of Kalispell, and it seems to me, it was H. C. Stapleton was the other member of the three that signed the trust agreement at the time, as I remember it.

Q. Were you instrumental in obtaining leases for the Troy-Sweet Grass Oil Company?

A. I think I acquired all of the leases of the Troy-Sweet Grass Oil Company.

Q. You were acquainted in Toole County and had lived there for quite a number of years?

A. That is right.

Q. And knew most of the landowners in the area of the Kevin-Sunburst field?

A. That is right.

Q. Do you recall how long you remained an officer of Troy-Sweet Grass Oil Syndicate after June 15, 1922, which [603] was the date of the operating agreement?

A. Yes, the operating agreement was dated June 15, 1922, between the Troy-Sweet Grass and

(Deposition of Kenneth G. Luke.)

the Ohio Oil, and after that sometime, I don't know how long, the corporation was formed known as the Potlatch Oil and Refining Company. Anyway, I remained with the Troy-Sweet Grass up to that time and I don't know how long after the organization of the Potlatch Oil and Refining Company. That is a long time ago.

Q. The complaint in this action alleges, the complaint of the Potlatch Oil and Refining Company and Inland Empire Oil and Gas Syndicate, alleges in Paragraph IX of the complaint that "On the 18th day of August, A.D. 1923, the aforesaid Troy-Sweet Grass Oil Syndicate assigned and set over and transferred unto the plaintiff, Potlatch Oil and Refining Company, all of its remaining interest of the Troy-Sweet Grass Oil Syndicate aforesaid in the lands and leases embraced in the operating agreement." According to your recollection, would you say that date is correct or probably correct?

A. Oh, I presume it is. I presume it is right.

Q. And I believe that that assignment shows yourself, Kenneth Luke, as executing it as Secretary, does it not?

Mr. McCabe: I might have a certified copy of that.

Q. (By Mr. Donovan): It appears that you did not sign this. It is signed by J. A. Harsh, Secretary.

A. Well, I had left prior to that time, then.

Q. Does that refresh your mind at all as to about the time your official connection with Troy-Sweet Grass terminated?

(Deposition of Kenneth G. Luke.)

A. Yes. I seem to recollect that I was—I am not sure. I [604] wouldn't know. It seems to me I was Secretary of the Potlatch Oil and Refining Company when it was first organized, for a short time. I may be absolutely wrong. This was made on the 18th of August, 1923. And the operating agreement was made on June 15, 1922, so I would say possibly a year after the execution of the agreement, a year or thereabouts.

Q. Do you recall how soon after the execution of this operating agreement with the Ohio Oil Company by Troy-Sweet Grass Oil Syndicate that the Ohio Oil Company commenced development upon the Oil Company's properties involved in the operating agreement?

A. I would say within three or four months. They started on the west end of what is known as the Israel Sindon tract, which I believe was the north half of Section 1-35-2, I believe.

Q. Township Thirty-five North, Range Two West?

A. Yes.

Q. And were you acquainted with the tract of land which had been known as the Irving H. Baker lease or the Ohio lease?

A. Yes, I drew the lease on it.

Q. Were you instrumental in obtaining that lease?

A. Yes, sir, very much.

Q. That lease, I believe, was taken direct to the Potlatch Oil and Refining Company?

A. It was taken direct to Troy-Sweet Grass.

(Deposition of Kenneth G. Luke.)

Q. That lease became an important producer, did it not? A. Yes, it did.

Q. Was that lease in production for some time before you severed your connection with Troy-Sweet Grass Oil Syndicate? [605]

A. I don't think it was. I don't remember whether they had started their first well on it or not, but offhand I would say "No." They might have drilled the first well. As I remember, the first well was a small well. Of course, I was in the field. I was well acquainted with it. Whether or not I was still with the Troy-Sweet Grass when they started operations on the Baker lease, I wouldn't remember,

Q. In this case, Mr. Luke, the plaintiffs have heretofore taken the deposition of T. P. Jones, and Mr. Jones states that the Baker lease was drilled, he thought, in late June or the first of July, something like that, in 1922. Of course, that is a matter of record. Does that refresh your mind at all?

A. Well, as I remember it, the first well the Ohio Oil Company drilled was the Sindon well—I may be wrong—in Section 1. Yes. That would take them at least—The operating agreement is June 15, 1922. I don't know how soon after that they drilled the Sindon well, but it would take them at least thirty days to drill the Sindon well—at that time, in those days of operation—or more.

Q. Well, is it a fact that very shortly after the operating agreement was made that the Ohio proceeded with development? A. Oh, yes.

(Deposition of Kenneth G. Luke.)

Q. Of the leases? A. Yes.

Q. During the time that you were Secretary or Trustee of the Troy-Sweet Grass Oil Syndicate, were there any arguments [606] or disputes about the charges made by the Ohio interests to Troy-Sweet Grass Oil Syndicate, any arguments or disputes with the Ohio Oil Company about its charges made against Troy-Sweet Grass Oil Company?

A. I would say no, none.

Q. And as I understood your testimony a little while ago, that on the morning of the execution of this operating agreement, after Mr. Hurley and Mr. Sellery and Mr. Jones came to the Troy-Sweet Grass office, there was no discussion in that office before the execution of the contract?

A. No, I would say not.

Q. Those three men whom I have just named, Mr. T. P. Jones, Mr. Hurley of the Ohio and Mr. Sellery of the Ohio, came there together, according to your recollection?

A. As I remember it, yes, sir.

Q. And they had the operating agreement with them fully prepared?

A. That is as I remember it, Mr. Donovan.

Q. And merely asked you to execute it as Secretary of the Troy-Sweet Grass Oil Syndicate and attach the seal? A. That is right.

Q. And that you did? A. I did.

Q. And that was merely a matter of probably ten minutes or twenty minutes after they came to the office?

(Deposition of Kenneth G. Luke.)

A. That is it. I would say not over twenty minutes.

Q. And so far as you recall, during the period of time that you were connected with Troy-Sweet Grass Oil Syndicate, Troy-Sweet Grass Oil Syndicate had no complaint against [607] the Ohio Oil Company because of its operations under the operating agreement or charges made under the operating agreement?

Mr. McCabe: Now, just a minute. To that the plaintiffs object on the ground it calls for a conclusion of the witness and is incompetent, irrelevant and immaterial, and no proper foundation has been laid for the admission of such evidence.

Q. (By Mr. Donovan): Will you answer that, Mr. Luke?

A. I don't remember any controversy existing up to the time I left.

Q. And state, if you can, whether during that period of time up until you severed your connection with Troy-Sweet Grass Oil Syndicate, whether the operations of the Ohio Oil Company under its operating agreement and charges made under it were entirely satisfactory.

Mr. McCabe: Just a minute. To which we object on the ground it calls for a conclusion of the witness and no proper foundation has been laid for the admission of the testimony, and it is wholly incompetent, irrelevant and immaterial.

Mr. Donovan: I am limiting this to the time

(Deposition of Kenneth G. Luke.)

when you were still the secretary of the Troy-Sweet Grass Oil Syndicate.

Mr. McCabe: I renew the objection.

A. What was the question, please?

(Question read.)

A. As far as I know.

Q. (By Mr. Donovan): Well, will you complete that. You mean as far as you know they were? [608]

A. As far as I know they were, yes.

Mr. Donovan: I think you may cross-examine, Mr. McCabe.

Mr. McCabe: No cross-examination.

Mr. Donovan: By agreement, the further hearing of this deposition will be adjourned until Tuesday at 1:00 o'clock to sign the deposition.

/s/ KENNETH G. LUKE,

Signature of Witness. [609]

Certificate of Notary Public

State of Washington,
County of Spokane—ss.

I, Geo. J. Stewart, a Notary Public in and for the State of Washington, do hereby certify that the witness, Kenneth G. Luke, in the foregoing deposition named, was by me duly sworn upon oath to testify the truth, the whole truth and nothing but the truth in said cause; that said deposition was taken pursuant to stipulation, a duly certified copy of which stipulation is hereunto annexed and

hereby referred to, on the 18th day of June, 1948, between the hours of 10:00 o'clock a.m. of said day and the hour of 1:00 o'clock p.m. of the 22nd day of June, 1948; that I stenographically took and transcribed and reduced to writing in typewritten form and recorded the testimony of said witness, and when completed said deposition was carefully read by said witness and by him stated to be correct and was by him subscribed in my presence.

I do hereby further certify that all objections made to the evidence presented have been noted upon said deposition, and, at the time of the taking of said deposition, no objections were made to the qualifications of the officer taking the deposition nor to the manner of taking it nor to the conduct of any party nor any other objection to the proceedings, excepting objections to the evidence presented, which said objections to evidence have been noted upon the deposition as aforesaid.

I do hereby further certify that I am not a relative or employee or attorney or counsel of any of the parties, nor am I a relative or employee of such attorneys, or counsel, and I am not financially interested in said action.

In Witness Whereof, I have hereunto subscribed my name and affixed my official seal as a Notary Public this 22nd day of June, 1948.

[Seal] /s/ GEO. J. STEWART,
Notary Public for the State of Washington, Resid-
ing at Spokane, Washington.

My Commission expires Oct. 19, 1950. [610]

[Title of District Court and Cause.]

STIPULATION FOR TAKING DEPOSITION
OF KENNETH G. LUKE

It is hereby stipulated and agreed by and between the above-named plaintiffs and defendant, through the undersigned attorneys of record for said respective parties, as follows, to wit:

1. That the deposition of Kenneth G. Luke, a resident of Spokane, Washington, may be taken upon oral examination as a witness on behalf of the defendant for use as evidence in the above-entitled action. Said Deposition is to be taken at Spokane, Washington, before George J. Stewart, a Notary Public for the State of Washington, at the Court Room of Department 2, Spokane County Court House, West 1116 Broadway, commencing at the hour of 10:00 o'clock a.m., on June 18, 1948, and continuing until said Deposition is completed.

2. It is further stipulated and agreed that the right of cross-examination of said witness is expressly reserved to the above-named plaintiffs and all objection as to the relevancy, materiality and competency of the testimony of the said Kenneth G. Luke are hereby expressly reserved to the parties hereto; and when so taken, the said Deposition may be used on the trial of said action subject to the same objections (except as to the form of

the questions) as if the said witness were personally present in court and testifying therein.

Dated this 3rd day of May, A.D. 1948.

/s/ E. J. McCABE,
Attorney for Plaintiffs.

/s/ W. H. EVERETT,
LOUIS P. DONOVAN,
Attorneys for Defendant.

[Endorsed]: Filed December 23, 1949. [611]

[Title of District Court and Cause.]

STATEMENT OF POINTS

The Plaintiffs in the above-entitled action set forth the following points on which they intend to rely on their appeal to the United States Circuit Court on Appeals for the Ninth Circuit.

The Trial Court erred as follows:

1. In finding that the pertinent portions of the agreement dated June 15, 1922, between Plaintiffs' predecessor in interest, Troy-Sweet Grass Oil Syndicate, and The Ohio Oil Company is plain and free from ambiguity and is clear, explicit and unequivocal in its language, terms and provisions and that Defendant, The Ohio Oil Company, at all times has fully complied with each and all of the obligations therein imposed upon it.

2. In finding that T. P. Jones was one of the persons who prepared the agreement of June 15, 1922, and was engaged directly or indirectly in the production and development of oil and gas leases and lands and was experienced in that business and knew or should have known and understood the meaning of the plain language used and contained in said agreement and that said agreement was entered into at arm's length.

3. In finding that at no time during the period subsequent [613] to Ohio entering into possession of the property, and prior to the time that Troy assigned to Inland and Potlatch, were any objections ever made by Troy to Ohio with reference to the accounting which included the same items as subsequent statements of account made to Inland and Potlatch contained.

4. In finding that payments made by Ohio were received and accepted by Plaintiffs during all of said period well knowing that Ohio had repeatedly refused to make any changes in its charges such as Plaintiffs proposed and Plaintiffs knew or should have known that the payments were made by Ohio in full payment of the respective items covered in its respective monthly statements.

5. In making and declaring as a conclusion of law that the agreement of June 15, 1922, between Troy and Ohio is clear and explicit does not involve an absurdity and that the agreement must be ascertained from the agreement alone and it may not be explained or interpreted by parol evidence

or reference to matters outside of and not recited in this written agreement.

6. In making and declaring as a conclusion of law that T. P. Jones' testimony as to the alleged remarks of John McFadyen, deceased manager of Ohio, is not admissible for any purpose that no foundation for such testimony has been made and no injustice will be done by excluding it and that no imperfection of the writing is put in issue.

7. In making and declaring as a conclusion of law that Ohio, through a continuous and unvarying course of conduct on its part, under the plain requirements of the written agreement since the execution thereof and at all times thereafter during the period questioned in this suit in all things complied with the clear term and provisions of the written agreement of June 15, 1922.

8. In making and declaring as a conclusion of law that laches in asserting their claims bar plaintiffs from any recovery [614] in the action.

9. In making and declaring as a conclusion of law that the statutes of limitation of the State of Montana bar plaintiffs from any recovery in the action.

10. In making and declaring as a conclusion of law that Ohio is not a trustee for plaintiffs.

11. In making and declaring as a conclusion of law that the monthly statements of account furnished by Ohio to Troy, Potlatch and Inland and

the acceptance and retention of the money paid to them respectively by Ohio with knowledge that Ohio repeatedly refused to make any changes in its accounting and made each payment in full settlement of each statement constitutes an account stated between Ohio and plaintiff and may not be challenged by them.

12. In making and declaring as a conclusion of law that plaintiffs recover nothing and that defendant do have judgment in its favor and recover from plaintiffs all defendant's costs expended in the action.

13. In rendering judgment in favor of defendant and against the plaintiffs and adjudging recovery of defendant's costs from plaintiffs in the action.

Dated this 5th day of April, 1951.

/s/ E. J. McCABE,

/s/ E. J. McCABE, JR.,

Attorneys for Plaintiffs.

Affidavit of Service by Mail attached.

[Endorsed]: Filed April 5, 1951. [615]

[Title of District Court and Cause.]

ORDER EXTENDING TIME FOR FILING
THE RECORD ON APPEAL

Upon application of the above-named Plaintiffs and Appellants in the above-entitled cause, by their attorney of record, and for good cause shown, it is by the Court, this 4th day of May, 1951,

Ordered that the time for filing and docketing in the Circuit Court of Appeals of the Ninth Circuit the record on appeal in this cause, be, and the same is hereby extended to and including June 5, 1951.

/s/ W. D. MURRAY,
Judge.

[Endorsed]: Filed May 4, 1951.

Entered and noted May 5, 1951. [625]

[Title of District Court and Cause.]

ORDER TO TRANSMIT ORIGINAL PAPERS
TO APPELLATE COURT

Upon motion of the above-named Plaintiffs for an Order to Transmit certain original Exhibits hereinafter specified to the Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause and the court having been duly advised;

It is hereby ordered that the Clerk of this court be, and he hereby is, directed to transmit in physi-

cal form and without copying same in the record on appeal to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit the following original papers and exhibits: Exhibits "A," "B," "C," "D" and "E" heretofore offered and received in evidence on behalf of the Plaintiffs at the trial of the above-entitled cause.

And it is further Ordered, that the above-enumerated papers and exhibits shall be received by the clerk of the aforesaid Circuit Court of Appeals and held by him during the pendency of the appeal herein for the use of the court and counsel without having the same printed as a part of the printed transcript of record on appeal. And it is further

Ordered, that after the termination of the proceedings on appeal, the clerk of the aforementioned Circuit Court of Appeals [627] shall return the said papers and exhibits to the Clerk of this Court.

Done this 16th day of May, 1951.

/s/ CHARLES N. PRAY,
Judge.

[Endorsed]: Filed May 16, 1951. [628]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO FILE AND
DOCKET RECORD ON APPEAL

Upon application by Plaintiffs and cause shown:

It is hereby ordered that the time for Plaintiffs to file their Record on Appeal in this action and docket same be, and the same hereby is, extended to and including the 24th day of June, 1951.

Done this 4th day of June, 1951.

CHARLES N. PRAY,
Judge.

[Endorsed]: Filed and entered June 4, [632]
1951.

[Title of District Court and Cause.]

NOTICE TO PRODUCE WRITINGS FOR USE
BY PLAINTIFFS AS EVIDENCE

To the above-named Defendant, The Ohio Oil Company, and to Messrs. W. H. Everett and Louis P. Donovan, your attorneys of record:

Demand is hereby made upon you to produce at the trial of the above-entitled action and have available for Plaintiffs the following described writings:

1. That form of written agreement which Mr. F. E. Hurley and Mr. A. M. Gee had with them and which they submitted to Mr. T. P. Jones, as

a trustee of Troy-Sweet Grass Oil Syndicate, on or about the 15th day of June, A.D. 1922, at Shelby Montana, for consideration during the negotiations between Mr. F. E. Hurley, Mr. A. M. Sellery, and Mr. A. M. Gee, and Mr. T. P. Jones, pertinent to oil and gas leases then owned by Troy-Sweet Grass Oil Syndicate, and which form of written agreement Mr. F. E. Hurley at the time called or designated as a 50-50 operating agreement, and to which type of agreement Mr. Jones expressly objected and stated he would not go into that kind of an agreement with anybody, and the possession of which form of agreement was retained by said F. E. Hurley.

2. That certain written form of proposed operating agreement which Mr. A. M. Gee presented to Mr. T. P. Jones for approval after Mr. Jones had objected to the written form mentioned in the preceding paragraph number 1 hereof, and at which time Mr. Jones [634] stated, substantially, that such latter form of proposed operating agreement did not conform to his, Mr. Jones', objections, and which form of proposed agreement was retained by Mr. A. M. Gee.

3. Original letter dated June 8, 1923, addressed and mailed to Mr. Lee Yealy, Superintendent of the Ohio Oil Company at Shelby, Montana, from the Inland Empire Oil and Gas Syndicate.

4. Original letter dated September 11, 1923, mailed and addressed to F. E. Hurley, Vice President, The Ohio Oil Company, Findlay, Ohio, with

reference to the I. H. Baker lease, from the Inland Empire Oil and Gas Syndicate.

5. Original letter dated October 3, 1924, addressed and mailed to The Ohio Oil Company, from the Inland Empire Oil and Gas Syndicate.

6. Original letter dated December 1, 1924, addressed and mailed to J. P. Sutton, Assistant Treasurer of The Ohio Oil Syndicate, from Inland Empire Oil and Gas Syndicate and bearing the signature of Robert E. Wilson, as President.

7. Original letter dated January 30, 1924, from The Inland Empire Oil and Gas Syndicate, and addressed and mailed to F. E. Hurley, Vice President, Ohio Oil Company, Findlay, Ohio.

8. Original letter dated January 23, 1925, addressed and mailed to The Ohio Oil Company, Findlay, Ohio, signed R. E. Wilson, President.

9. Original letter dated January 28, 1928, addressed and mailed to The Ohio Oil Company, Shelby, Montana, and purporting to be from the Inland Empire Oil and Gas Syndicate.

10. Original letter dated January 28, 1925, addressed and mailed to The Ohio Oil Company, Findlay, Ohio, and purporting to be from Inland Empire Oil and Gas Syndicate, together with the sheets 1 and 2 attached to aforesaid letter of January 28, 1925.

11. Original letter dated February 9, 1925, addressed and mailed to The Ohio Oil Company,

Findlay, Ohio, purporting to be [635] from the Inland Empire Oil and Gas Syndicate and to which letter is attached a sheet referred to as I. H. Baker Farm, entitled "Tanks."

12. Original letter dated May 11, 1925, addressed and mailed to The Ohio Oil Company, Findlay, Ohio, and purporting to be from Inland Empire Oil and Gas Syndicate.

13. Original letter dated August 8, 1925, addressed and mailed to The Ohio Oil Company, Casper, Wyoming, attention of Mr. Firmin, and signed Freeman, Thelen & Frary, by J. W. Freeman, and pertaining to a dispute which it states has arisen over the interpretation of the agreement dated June 15, 1922, between the Troy-Sweet Grass Oil Syndicate, a common law trust, and the Ohio Oil Company, a corporation, and wherein is purported to be set forth a statement of the more important items of this difference of opinion.

14. Original letter dated July 17, 1925, addressed and mailed to The Ohio Oil Company, Findlay, Ohio, and written by Freeman, Thelen & Frary, acting for Potlatch Oil and Refining Company and Inland Empire Oil and Gas Syndicate, which letter refers to objections theretofore made by Potlatch Oil & Refining Company and Inland Empire Oil & Gas Syndicate to charges made by The Ohio Oil Company in connection with the Operating Agreements made with Troy-Sweet Grass Oil Syndicate, and which letter designates the place where writ-

ten from, at the top of the letter, as Shelby, Montana.

15. Original letter of October 3, 1924, addressed and mailed to The Ohio Company, Findlay, Ohio, relative to discrepancies in invoice covering the Baker lease and written by either Inland Empire Oil and Gas Syndicate or Potlatch Oil and Refining Company, or by them jointly.

16. Original letter dated January 24, 1941, addressed and mailed to Mr. Jack Fredall, Ohio Oil Company, Shelby, Montana, with [636] reference to 1500 ft. of 2" line pipe which was credited by the Ohio Oil Company in the amount of one cent a foot and directing attention that Mr. Lee at Casper, asked \$60.00 for this pipe at one cent a foot, and written by Manager Gerbugh of Potlatch Oil and Refining Company.

17. Original letters of January 9, 1941, addressed and mailed to The Ohio Oil Company, Findlay, Ohio, and Casper, Wyoming, and calling attention to credit for "1500 ft. 2" lead pipe junked" at 1c and offering to purchase this pipe and which letter was jointly from the Potlatch Oil & Refining Company and Inland Empire Oil & Gas Syndicate.

18. Original letter dated December 3, 1938, addressed and mailed to The Ohio Oil Company, Casper, Wyoming, and objecting to charge made against the Baker lease and Sindon Leases for October, 1938, and written by Potlatch Oil and Refining Company.

19. Original letter dated January 28, 1938, addressed and mailed to The Ohio Oil Company, Findlay, Ohio, and written by Potlatch Oil and Refining Company and Inland Oil and Gas Syndicate, pertaining to amount of credit allowed for certain 3" tubing.

20. Original letter of June 9, 1936, addressed and mailed to Mr. L. N. Kiplinger, The Ohio Oil Company, Casper Wyoming, written jointly by Potlatch Oil & Refining Company and Inland Empire Oil & Gas Syndicate, and objecting to certain charges made by The Ohio Oil Company and calling attention to the limitation of charges to be made against Potlatch Oil and Refining Company and Inland Empire Oil & Gas Syndicate.

21. Original letter of May 20, 1936, addressed and mailed to The Ohio Oil Company, Findlay, Ohio, from Potlatch Oil & Refining Company and Inland Empire Oil & Gas Syndicate, and directing attention to the fact that the charges referred to in such letter are not in conformity with either the letter or the spirit of the contracts with the Ohio Oil Company. [637]

22. Original letter dated January 7, 1936, addressed and mailed to The Ohio Oil Company, Findlay, Ohio, objecting to an overcharge of \$100.00 made by The Ohio Oil Company and which letter was written by Potlatch Oil & Refining Company.

23. Letter of December 30, 1935, addressed and mailed to The Ohio Oil Company, Findlay, Ohio, containing objections to certain charges and

credits for casing and equipment made by The Ohio Oil Company and which letter was written by Potlatch Oil and Refining Company.

24. Original letter of December 11, 1935, addressed and mailed to The Ohio Oil Company, Findlay, Ohio, directing attention to error in credits made to the Baker, I. Sindon and B. Sindon accounts, respectively, from Potlatch Oil and Refining Company.

25. Original letter of January 30, 1934, addressed and mailed to The Ohio Oil Company, relative to an error of \$100.00 in addition in the B. Sindon lease account and written by Potlatch Oil & Refining Company.

26. Original letter of July 19, 1933, addressed and mailed to The Ohio Oil Company, Findlay, Ohio, directing attention to an error for gas sold from the I. Sindon lease.

27. Original letter addressed and mailed to The Ohio Oil Company, Casper, Wyoming, attention of Mr. Firmin, dated August 6, 1925, and signed Freeman, Thelen & Frary, and itemizing and specifying various objections to charges made by The Ohio Oil Company against Potlatch Oil & Refining Company and Inland Empire Oil and Gas Syndicate, as successors in interest to Troy-Sweet Grass Oil Syndicate, a common law trust, under an operating agreement theretofore entered into between Troy-Sweet Grass Oil Syndicate and the Ohio Oil Company.

28. Original letter written by Freeman, Thelen, and Frary, addressed and mailed to The Ohio Oil Company, attention Mr. Firmin, dated August 5, 1925, and specifying and itemizing various objections to charges made by The Ohio Oil Company against Potlatch Oil & Refining Company and Inland Empire Oil and Gas Syndicate, as successors [638] in interest to Troy-Sweet Grass Oil Syndicate, a common law trust, under an operating agreement theretofore entered into between Troy-Sweet Grass Oil Syndicate, a common law trust, and The Ohio Oil Company.

29. Copy of The Ohio Oil Company of original letter dated September 12, 1925, addressed and mailed to Freeman, Thelen, & Frary, attention of Mr. J. W. Freeman, written on behalf of The Ohio Oil Company by "F. B. Firmin, Cashier," and purporting to have been written in response to a letter received by The Ohio Oil Company from Freeman, Thelen & Frary as of August 5, 1925, and pertaining to a dispute which had arisen over the interpretation of the operating agreement of June 15, 1922, between "Troy-Sweet Grass Oil Syndicate" and "The Ohio Oil Company" and referring to "the important items involved in this difference of opinion."

30. Original letter addressed and mailed to The Ohio Oil Company, Findlay, Ohio, dated May 11, 1925, referring to a failure to send check for credit balance, and which letter appears to have been written by Potlatch Oil & Refining Company.

31. Original letter dated January 31, 1925, mailed and addressed to The Ohio Oil Company, from Inland Empire Oil and Gas Syndicate, signed R. E. Wilson, President.

32. Original letter dated July 18, 1946, addressed and mailed to Mr. H. R. Healy, Division Manager, Ohio Oil Company, Casper, Wyoming, and from E. J. McCabe, attorney, of Great Falls, Montana, and relating to agreements between Troy-Sweet Grass Oil Syndicate and The Ohio Oil Company and between Potlatch Oil & Refining Co. and the Ohio Oil Company, and relating, among other things, to alleged improper charges made under said agreements by The Ohio Oil Company under said agreements with The Ohio Oil Company and which agreements were referred to as having been executed on June 15, 1922. [639]

33. Original itemized written statement of alleged improper charges made by The Ohio Oil Company against Inland Empire Oil & Gas Syndicate, under operating agreement between the Troy-Sweet Grass Oil Syndicate and Ohio Oil Company, dated June 15, 1922, and delivered to Mr. H. H. Healy, as the representative of The Ohio Oil Company, by E. J. McCabe, as attorney for Inland Empire Oil and Gas Syndicate, at a meeting held between Messrs. H. H. Healy and W. H. Everett, representing The Ohio Oil Company, and E. J. McCabe, representing Inland Empire Oil and Gas Syndicate, in the office building of the Ohio Oil Company at Casper, Wyoming, on July 26, 1946.

34. Original itemized written statement of alleged improper charges made by the Ohio Oil Company against Potlatch Oil and Refining Company, under operating agreement between the Troy-Sweet Grass Oil Syndicate and the Ohio Oil Company, dated June 15, 1922, and delivered to Mr. H. H. Healy, as the representative of the Ohio Oil Company, by E. J. McCabe, as attorney for Potlatch Oil and Refining Company, at a meeting held between Messrs. H. H. Healy and W. H. Everett, representing the Ohio Oil Company, and E. J. McCabe, representing Potlatch Oil and Refining Company, in the office building of the Ohio Oil Company at Casper, Wyoming, on July 26, 1946.

35. Original letter dated November 25, 1946, delivered to Mr. H. H. Healy, as the representative of the Ohio Oil Company, from E. J. McCabe, as attorney for Potlatch Oil and Refining Company, and relating to alleged erroneous and improper charges made by the Ohio Oil Company against Potlatch Oil & Refining Company, under operating agreements made between Troy-Sweet Grass Oil Syndicate and Ohio Oil Company, and between the Ohio Oil Company and Potlatch Oil and Refining Company, which agreements bear date of June 15, 1922, together with the original supplemental itemized statement of such improper charges, delivered on November 25, 1946, to Mr. H. H. Healy. [640]

36. Original letter dated November 25, 1946, delivered to Mr. H. H. Healy, as the representative of the Ohio Oil Company, from E. J. McCabe, as

attorney for Inland Empire Oil & Gas Syndicate, and relating to alleged erroneous and improper charges made by the Ohio Oil Company against Inland Empire Oil & Gas Syndicate, under operating agreement made between Troy-Sweet Grass Oil Syndicate and Ohio Oil Company, which agreement bears date of June 15, 1922, together with the original supplemental itemized statement of such improper charges delivered on November 25, 1946, to Mr. H. H. Healy.

37. Original letter dated January 20, 1947, addressed and mailed to Mr. W. H. Everett, attorney, the Ohio Oil Company, Casper, Wyoming, from E. J. McCabe, and referring to a letter dated January 15th, from Mr. W. H. Everett, attorney, to E. J. McCabe, Attorney at Law.

38. Original letter dated January 20, 1947, addressed and mailed to Mr. H. H. Healy, division manager, the Ohio Oil Company, Casper, Wyoming, wherein it is recited that a copy of a letter mailed on that date to Mr. Everett was enclosed, together with copy of the letter to Mr. Everett mentioned in said letter to Mr. H. H. Healy.

39. Original letter dated February 12, 1947, addressed and mailed to Mr. H. H. Healy, the Ohio Oil Company, Casper, Wyoming, from E. J. McCabe, and referring to a purported letter from said Mr. Healy to E. J. McCabe, dated January 31, 1947.

40. Original letter dated March 19, 1947, addressed and mailed to Mr. H. H. Healy, c/o the

Ohio Oil Company, P. O. 120, Casper, Wyoming, from E. J. McCabe, enclosing copy of complaint on behalf of Potlatch Oil and Refining Company and Inland Empire Oil and Gas Syndicate, against the Ohio Oil Company, and, among other things, referring to the fact that the original complaint was filed in the District Court of Toole County, Montana, on March 18th. [641]

41. Original letter dated July 21, 1922, addressed and mailed to Ohio Oil Company, Shelby, Montana, from Troy-Sweet Grass Oil Syndicate by its secretary and enclosing invoice covering lumber from Sunburst hauled to Sec. 3, Township 35 N, Range 2 W, together with the invoices referred to in said letter.

You Are Hereby Notified That in the event of your failure to produce the above-enumerated writings and documents, that secondary evidence of the contents of any writing or document which you fail to produce at the trial will be offered in evidence on behalf of the above-named plaintiffs at the trial of the above-entitled action.

Dated this 1st day of December, 1949.

/s/ E. J. McCABE,

Attorney for Plaintiffs.

Service of the foregoing notice and receipt of a true copy thereof acknowledged this 1st day of December, 1949.

LOUIS P. DONOVAN,

Attorney for Defendant.

[Endorsed]: Filed December 8, 1949. [642]

[Title of District Court and Cause.]

ORDER TO TRANSMIT ORIGINAL MAP
TO APPELLATE COURT

Upon motion of the above-named Plaintiffs for an Order to Transmit a certain original map, and exhibit, hereinafter specified to the Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause and the court having been duly advised;

It Is Hereby Ordered that the Clerk of this court be, and he hereby is, directed to transmit in physical form and without copying same in the record on appeal to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit the following original map, defendant's Exhibit "W," offered and received in evidence on behalf of the defendant at the trial of the above-entitled cause.

And it is further ordered, that the above-enumerated map exhibit shall be received by the clerk of the aforesaid Circuit Court of Appeals and held by him during the pendency of the appeal herein for the use of the court and counsel without having the same printed as a part of the printed transcript of record on appeal, and it is further

Ordered, that after the termination of the proceedings on appeal, the clerk of the aforementioned

Circuit Court of Appeals shall return the said papers and exhibits to the Clerk of this court.

Done this 20th day of June, 1951.

CHARLES N. PRAY,
Judge.

[Endorsed]: Filed and entered June 20, [644]
1951.

CLERK'S CERTIFICATE TO TRANSCRIPT OF RECORD

United States of America,
District of Montana—ss.

I, H. H. Walker, Clerk of the United States District Court for the District of Montana, do hereby certify and return to the Honorable, the United States Court of Appeals for the Ninth Circuit, that the foregoing volume consisting of 647 pages, numbered consecutively from 1 to 647 inclusive, constitute a full, true and correct transcript of all portions of the record in Case Number 956, Potlatch Oil & Refining Company, et al., versus the Ohio Oil Company, a corporation, designated by the parties as the record on appeal therein, as appears from the original records and files of said court in my custody as such Clerk.

I further certify that, pursuant to the order of said District Court, I transmit herewith, as a part

of the record on appeal, original exhibits Nos. 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 21a, 22, 23, 24, 26, 27, 28, and 29; and Exhibits "G," "H," "I," "J," "K," "L," "M," "N," "O," "P," "Q," "R," "S," "T," "U," "V," "W," "X" and "Y"; and Exhibits "A," "B," "C," "D," and "E," which were received in evidence and have been designated by the appellants as part of the record on appeal.

I further certify that the costs of said Transcript of Record on Appeal amount to the sum of Seventy-Seven and 10/100th Dollars, (\$77.10), and have been paid by the appellants.

Witness my hand and the seal of said Court at Great Falls, Montana, this 11th day of July, A.D. 1951.

[Seal] H. H. WALKER,
Clerk, United States District Court, District of
Montana.

By /s/ C. G. KEGEL,
Deputy Clerk. [647]

[Endorsed]: No. 13010. United States Court of Appeals for the Ninth Circuit. Potlatch Oil & Refining Company, a Corporation, and Jean P. Gerlough, Stanley H. Hodgman and Roy E. Larson, as Trustees of That Certain Trust Known as Inland Empire Oil and Gas Syndicate, a Common Law Trust, Appellants, vs. The Ohio Oil Company, a Corporation, Appellee. Transcript of Record, Appeal from the United States District Court for the District of Montana.

Filed July 13, 1951.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

United States Court of Appeals
for the Ninth Circuit

POTLATCH OIL AND REFINING COMPANY,
a Corporation, and JEAN P. GERLOUGH,
STANLEY H. HODGMAN and ROY E. LAR-
SON, as Trustees of That Certain Trust
Known as INLAND EMPIRE OIL AND
GAS SYNDICATE, a Common Law Trust,
Appellants and Plaintiffs,

vs.

THE OHIO OIL COMPANY, a Corporation,
Respondent and Defendant.

ORDER EXTENDING TIME FOR
DOCKETING RECORD ON APPEAL

Upon motion of the above-named appellants and
cause therefor shown,

It Is Hereby Ordered that the time for docketing
the record on appeal in the above-entitled Court
and cause be and the same is hereby extended to
and including July 14, 1951.

Done this 25th day of June, 1951.

/s/ W. E. ORR,

Judge, U. S. Court of Appeals
for the Ninth Circuit.

[Endorsed]: Filed July 2, 1951.

United States Court of Appeals
for the Ninth Circuit

DESIGNATION OF PARTS OF THE RECORD
TO BE PRINTED AND STATEMENT OF
POINTS INTENDED TO BE RELIED
UPON BY APPELLANTS ON APPEAL

To the Clerk of the United States Court of Appeals
for the Ninth Circuit:

I.

You will please be advised that the appellants herein do hereby designate for printing in the appeal of the above case the entire transcript of the record forwarded to you by the Clerk of the United States District Court for the District of Montana, in the above-entitled action except plaintiffs' (appellants') original exhibits "A," "B," "C," "D," "E," and "W," transmitted to the above court by order of the aforesaid district Court, together with this designation of parts of the record to be printed and the statement of points on which the appellants intend to rely on appeal filed in the above-entitled action on appeal, together with order extending time for docketing record on appeal given, made and entered in the above cause, by the Honorable William E. Orr, one of the Judges of the above-entitled court, under date of June 25, 1951.

II.

The above-named appellants do hereby make and file this statement of points on which they intend to rely on appeal of the above action:

(1) The complaint in this action seeks a correct accounting of oil and gas produced and sold by defendant from lands embraced in an oil and gas lease known as the "Baker lease," as successors in interest to the original lessee named in the lease and as successors in interest to the rights of Troy-Sweet Grass Oil Syndicate under agreements of such Syndicate entered into with the Ohio Oil Company and will rely generally upon the points that improper and erroneous money charges were made by respondent against the appellants in conducting operations under the agreements and notwithstanding both oral and written objections were made to such charges in statements rendered by respondent and correct accounting and payment demanded and were not corrected resulting in appellants being deprived of their due and proper share of proceeds from oil and gas sold by respondent who was in sole and exclusive possession of the lands and operations of production and sale of oil and gas from the lands and that the trial court was in error in denying the appellants an accounting and rendering judgment in favor of the respondents and that the trial court was in error and appellants will also urge the following points on the appeal: The trial court was in error:

(a) In finding as facts that the pertinent portions of the agreement dated June 15, 1922, between plaintiffs' (appellants') predecessor in interest, Troy-Sweet Grass Oil Syndicate, and the Ohio Oil Company is plain and free from ambiguity and is clear, explicit and unequivocal in its language,

terms and provisions that defendant, the Ohio Oil Company, at all times has fully complied with each and all of the obligations therein imposed upon it.

(b) In finding as facts that T. P. Jones was one of the persons who prepared the agreement of June 15, 1922, and was engaged directly or indirectly in the production and development of oil and gas leases and lands and was experienced in that business and knew or should have known and understood the meaning of the plain language used and contained in said agreement and that said agreement was entered into at arm's length.

(c) In finding as facts that at no time during the period subsequent to Ohio entering into possession of the property, and prior to the time that Troy assigned to Inland and Potlatch, were any objections ever made by Troy to Ohio with reference to the accounting which included the same items as subsequent statements of account made to Inland and Potlatch contained.

(d) In finding as facts that payments made by Ohio were received and accepted by plaintiffs (appellants) during all of said period well knowing that Ohio had repeatedly refused to make any changes in its charges such as plaintiffs (appellants) proposed and plaintiffs (appellants) knew or should have known that the payments were made by Ohio in full payment of the respective items covered in its respective monthly statements.

(e) In making and declaring as a conclusion of law that the agreement of June 15, 1922, between Troy and Ohio is clear and explicit does not in-

volve an absurdity and that the agreement must be ascertained from the agreement alone and it may not be explained or interpreted by parol evidence or reference to matters outside of and not recited in the written agreement.

(f) In making and declaring as a conclusion of law that T. P. Jones' testimony as to the alleged remark of John McFadyen, deceased manager of Ohio, is not admissible for any purpose that no foundation for such testimony has been made and no injustice will be done by excluding it and that no imperfection of the writing is put in issue.

(g) In making and declaring as a conclusion of law that Ohio through a continuous and unvarying course of conduct on its part under the plain requirements of the written agreement since the execution thereof and at all times thereafter during the period questioned in this suit in all things complied with the clear term and provisions of the written agreement of June 15, 1922.

(h) In making and declaring as a conclusion of law that laches in asserting their claims bar plaintiffs (appellants) from any recovery in the action.

(i) In making and declaring as a conclusion of law that the statutes of limitation of the State of Montana bar plaintiffs (appellants) from any recovery in the action.

(j) In making and declaring as a conclusion of law that Ohio is not a trustee for plaintiffs (appellants).

(k) In making and declaring as a conclusion of law that the monthly statements of account furnished by Ohio to Troy, Potlatch and Inland and the acceptance and retention of the money paid to them respectively by Ohio with knowledge that Ohio repeatedly refused to make any changes in its accounting and made each payment in full settlement of each statement constitutes an account stated between Ohio and plaintiffs (appellants) and may not be challenged by them.

(l) In making and declaring as a conclusion of law that plaintiffs (appellants) recover nothing and that defendant do have judgment in its favor and recover from plaintiffs (appellants) all defendant's (respondent's) costs expended in the action.

(m) In rendering judgment in favor of defendant (respondent) and against the plaintiffs (appellants) and adjudging recovery of defendant's (respondent's) costs from plaintiffs (appellants) in the action.

(n) That the findings of fact and conclusions of law made by the court, and hereinabove referred to, were each contrary to the evidence and the law.

(o) That the judgment rendered and entered in favor of defendant and against the appellants, (plaintiffs) is contrary to the evidence and against the law.

(p) That the trial court erred in disregarding the testimony of witness T. P. Jones concerning and relating to the circumstances under which the

agreements were made between Troy-Sweet Grass Oil Syndicate and the Ohio Oil Company and as to what was said and done by the representatives of the parties to such agreement as to the meaning and interpretation which such parties placed upon the agreement at the time of the making thereof.

III.

By filing this statement of points the appellants do not intend to waive or abandon the right to urge error upon any of the rulings or findings of the trial court resulting in a judgment in said cause in favor of the respondent (defendant) and against the appellants (plaintiffs).

Dated this 24th day of July, 1951.

/s/ E. J. McCABE,

Attorney for Appellants.

E. J. McCABE, JR.,
Of Counsel.

[Endorsed]: Filed July 27, 1951.

